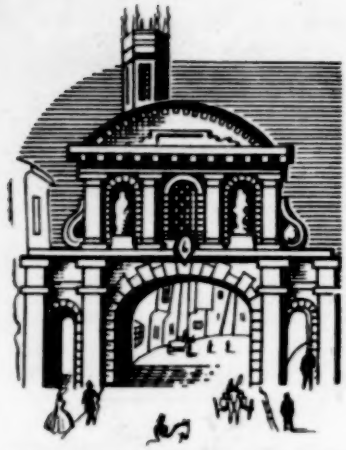

JUSTICE OF THE PEACE & LOCAL GOVERNMENT REVIEW

Saturday, October 22, 1955 **Vol. CXIX. No. 43**

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 2 p.m. Wednesday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

BOROUGH OF WARWICK

Appointment of Town Clerk

APPLICATIONS are invited from Solicitors having experience in Local Government for the appointment of Town Clerk at a commencing salary of £1,255 per annum, rising by annual increments of £52 10s. to a maximum of £1,465.

It is probable that, subject to the approval of the Registrar General and the Warwickshire County Council, the successful applicant for the appointment of Town Clerk will also be appointed Superintendent Registrar for the Registration District of Warwick and Leamington; the commencing salary for this appointment will be £444 per annum, subject to a deduction of £150 per annum in respect of the use of the Staff and office machinery of the Borough Council.

The salary and conditions of service laid down by the Joint Negotiating Committee for Town Clerks have been applied by the Borough Council.

A list of the Special Conditions applicable to the appointment of Town Clerk and a form of application may be obtained from the undersigned, to whom applications must be delivered not later than October 29, 1955.

Canvassing will disqualify.

H. C. F. M. FILLMORE,
Town Clerk.

Town Clerk's Office,
Warwick.

COUNTY OF FLINT

Magistrates' Courts Committee

APPLICATIONS are invited for the appointment of a Male Clerk in the Justices' Clerk's Office at Holywell. A sound knowledge of accounting is essential and experience of magisterial work will be an advantage. The salary will be £500 per annum, rising by two yearly increments of £25 to £550. Commencing salary according to experience.

The post is superannuable.

Application forms, together with conditions of employment, may be obtained from the undersigned and should be returned not later than October 31, 1955.

W. HUGH JONES,
Clerk of the Magistrates' Courts Committee.

County Buildings,
Mold.

SOUTH WESTERN GAS BOARD

Assistant Solicitor

THE South Western Gas Board requires an Assistant Solicitor in the Legal Department at Bath.

The main duties will comprise conveyancing and common law work (including advocacy). Salary will be within the range £975—£1,200, commencing according to age and experience, and the post will be superannuable. Applications, with names and addresses of two referees, to the undersigned not later than Friday, October 28, 1955.

R. G. LAYCOCK,
Solicitor.

9A, Quiet Street,
Bath.

COUNTY BOROUGH OF BURY

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with Local Government experience for the appointment of Deputy Town Clerk. Salary £1,151 13s. 4d. × £35 (5)—£1,326 13s. 4d.

Conditions of appointment and form of application may be obtained from me, and applications must reach me not later than October 31, 1955.

EDWARD S. SMITH,
Town Clerk.

Town Hall,
Bury.
October 4, 1955.

BOROUGH OF BRIDGWATER

Deputy Town Clerk

APPLICATIONS are invited from Solicitors with Local Government experience for the above position. Salary £900 rising by annual increments of £40 to £1,100 per annum. Applications, stating age, qualifications and experience, with the names of two referees, must reach the undersigned not later than Monday, October 31, 1955.

Canvassing will disqualify.

H. A. CLIDERO,
Town Clerk.

Town Hall,
Bridgwater.

BOROUGH OF HOVE

Senior Assistant Solicitor

SENIOR Assistant Solicitor required, salary Grade A.P.T. VI (£825—£1,000). The successful candidate will be required to undertake advocacy, conveyancing, administrative and committee work. The appointment is superannuable and subject to medical examination.

Applications, stating age, qualifications and experience, with the names and addresses of three referees, must reach the undersigned at the Town Hall, Hove, not later than October 31, 1955.

JOHN E. STEVENS,
Town Clerk.

CITY OF LEEDS

Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor. The maximum salary for the post is £900 per annum and the commencing salary will be £780 per annum or higher according to qualifications and experience.

The person appointed will be required to conduct prosecutions on behalf of the Police and the Corporation and to assist in the work of the office generally. He will be subject to the Local Government Superannuation Acts, 1937 to 1953, and will be required to pass a medical examination before his appointment is confirmed.

Previous Local Government experience is not essential and applications will be considered from newly qualified Solicitors.

Applications, with details of age, date of admission, qualifications and experience, together with the names of two persons to whom reference may be made, must reach me by November 7, 1955.

Canvassing in any form, either directly or indirectly, will be a disqualification.

ROBERT CRUTE,
Town Clerk.

Civic Hall,
Leeds, 1.

HERTFORDSHIRE MAGISTRATES' COURTS COMMITTEE

Petty Sessional Division of Watford

Justices' Clerk's Cashier

APPLICATIONS are invited for this appointment from persons experienced in fines and fees accounting, Collecting Officer's accounts, process for arrears and the general work of a Justices' Clerk's Office.

Applications, stating age, qualifications and experience, should reach the undersigned, together with three copies of recent testimonials, not later than Saturday, November 5, 1955.

The salary will be within Grade II of the A.P. & T. Division of the National Joint Council's Scales for Local Authorities (£560 × £20—£640 per annum).

The appointment will be subject to the Local Government Superannuation Act, 1953.

D. W. WHITAKER,
Clerk to the Justices.

The Court House,
Clarendon Road,
Watford, Herts.

Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

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CONTENTS

REPORTS

NOTES OF THE WEEK

Judicial Longevity: The late Lord Alness

We announce with great regret the death at the age of 87 of Lord Alness, G.B.E., who had an eminent judicial and political career.

Lord Alness was born on May 28, 1868, the son of a Scottish Manse in Alness, Ross-shire. After Aberdeen Grammar School he was sent to Edinburgh University where he graduated in both arts and law. He became an advocate in 1893, and took silk in 1910 at the age of 42.

His style of advocacy was quiet but persuasive and he appeared on behalf of the United Free Church in the great Scottish Church case.

Alongside his legal practice Lord Alness took an active part in political life. In 1910 he was returned as Liberal member for the Wick Burghs, a seat he continued to represent until 1918, thereafter being returned for Roxburgh and Selkirk until 1922. Early in his political career he received office, being made Lord Advocate in 1913 and subsequently being promoted in 1916 to be Secretary of State for Scotland, with a seat in the Cabinet. It became his duty whilst holding this post to move a number of important measures connected with the Scottish Churches and education in Scotland. In 1922 the Rt. Hon. Robert Munro, Q.C., M.P., as he then was, was appointed to be Lord Justice-Clerk and President of the Court of Session (Second Division) in the room of Lord Guthrie.

It was in this and subsequent judicial positions that Lord Alness probably achieved his greatest distinction. Being qualified by reason of it as a holder of "High Judicial office" to sit on the Judicial Committee of the Privy Council, he frequently helped this tribunal whilst serving in his judicial position in Scotland. When he retired from his Scottish appointment in 1933 he came permanently to London and sat on the committee which heard appeals from India and all the Dominions and Colonies. In 1939, he retired from the Judicial Committee and took up Parliamentary duties in the House of Lords as a Lord in Waiting. In addition he was prominently connected with the War Savings and Trustee Savings Bank movements in Scotland. His public services were recognized in 1946, when he was appointed a G.B.E. (He had already been raised to the peerage in 1934.) Lord Alness in private life was an attractive figure, hospitable, kindly and humorous and he will be greatly missed by his numerous friends in all walks of life.

Civil and Criminal Remedies

The same Act may give ground for both a civil action and a criminal prosecution, and in general rule both courses may be adopted. There is, however, a rule that if a tort is also a felony the criminal prosecution must be undertaken before the civil action is brought, unless for some reason the prosecution cannot be instituted. The rule is of ancient origin, and based on public policy, it being the duty of the citizen to act as prosecutor in case of a serious offence, in the interest of the community. It applies to felonies and not to misdemeanours, because felonies were in earlier times more serious than misdemeanours. Today, many misdemeanours are more serious than some felonies.

The rule is not often referred to in magistrates' courts, but recently a solicitor was reported to have protested to magistrates that a civil action had been commenced against his client before the magisterial proceedings for alleged larceny were brought. However that might be it appears to be more a matter for the civil court than for the magistrates. The rule does not require that civil proceedings should be extinguished, but only that they should be stayed.

A New Use for Frogman's Outfit

In modern times many devices have been used for the purpose of taking salmon by illicit means, and explosives have even been used. Unsporting methods have been adopted doubtless because of the high price of salmon. The Salmon and Freshwater Fisheries Act, 1923, contains a prohibition in wide terms against illicit fishing. It prohibits the use of any light for the purpose, and various instruments, including spears. It also makes it an offence for any person to have in his possession a light or any of the instruments mentioned in the section in such circumstances as to satisfy the court before which he is charged that he intended at the time to take or kill salmon, trout or freshwater fish by means thereof. By s. 74, it is provided that a maximum of £50 fine may be imposed for a first offence.

A Yorkshire paper reports two cases in which men were fined for offences against the Act, it being stated that each was wearing a frogman's outfit. One was said to have been carrying a harpoon gun, while swimming in the River Lune. He was fined £5 with costs. In the second case the evidence showed that the defendant was seen to slash at a salmon with a dagger while he was swimming under water. The same penalty was imposed upon him.

Magistrates' Courts and Divorce Proceedings

Addressing a meeting of the Berkshire, Buckinghamshire and Oxfordshire branch of the National Association of Probation Officers, Mr. C. H. Stanley, a Berkshire probation officer, advocated a procedure by which divorce proceedings might be begun in the magistrates' courts.

A similar interesting suggestion was put forward in "The Life of a London Beak," published in 1930 by the late Mr. H. L. Cancellor, a much respected metropolitan stipendiary magistrate. At that time Mr. Cancellor was concerned about the inability of very poor people to bring divorce proceedings, but he was also anxious that conciliators should be appointed in the hope of saving some of the marriages.

Since Mr. Cancellor wrote, the position of poor litigants has been much improved. Mr. Stanley is reported as suggesting that probably because of legal aid—and it may be connected with higher legal fees in the divorce courts—hundreds of couples have been encouraged to seek divorce where in many cases there could have been reconciliation. His proposal is that magistrates should take depositions in divorce cases as they do in criminal matters which go before a higher court. This was the basis of Mr. Cancellor's scheme also.

Both schemes include a power for magistrates to make interim orders, and there would be opportunities for early efforts at reconciliation between parties who were willing to accept the good offices of a conciliator. Many solicitors would co-operate, as they do already.

A Persistent "Drunk-in-Charge"

We have read with interest the account in a daily newspaper of the hearing of a case against a defendant who was arrested at 8 *p.m.* on a charge under s. 15 of the Road Traffic Act, 1930, was released on bail from the police station at 10.30 *p.m.* on an undertaking by a friend, who stood surety for him, to drive him home and was then arrested again at 12.25 *a.m.* (less than two hours later) when he was once more driving his car whilst under the influence of drink. On the first charge he was fined £25 and disqualified for holding a licence for one year. On the second charge he was fined £50 and disqualified for three years. No doubt he thought himself fortunate in not being sent to prison. It was said that he was wounded in the 1914-18 war and was gassed and he suffered, in consequence, from asthma. For this complaint he took tablets prescribed by his doctor, and the doctor said in evidence that some of these were one-grain, and others three-grain tablets. The latter were intended to be taken at night to induce sleep and their effect would be increased if they were taken before alcohol was consumed. The defendant said that he did not appreciate this fact.

One point which strikes us in this case, as reported, is the apparent failure by the defendant and by the friend who stood surety for him after the first occurrence, to realize the seriousness of the offence. We say this because it is reported that after his release on bail, he was taken by his surety, who was the licensee of a hotel, to that hotel. On the way back to the hotel, the defendant said he would like a drink of water, and some food. We would add here that the police inspector who released the defendant on bail is reported to have said when he was so released, in the care of his surety, he was "improving," but was still a little confused. In these circumstances his surety thought fit to give him, not water but a "large scotch and ginger ale," with no food because the surety's wife had gone to bed. Vain efforts were made to get a taxi in which the defendant could be driven home and he then set off in his own car. His surety stated that the defendant assured him that he was all right and that he drove away normally. Thereafter he was arrested on the second charge.

One is tempted to wonder whether anything short of a prison sentence will bring home to people who treat the matter in this way, the serious nature of this offence. Magistrates do not need to be reminded that the maximum penalty prescribed, on summary conviction, is one of £50 or four months' imprisonment on a first conviction, and £100 and/or four months' imprisonment on a second or subsequent conviction.

The Future of Housing Subsidies

The Minister of Housing and Local Government (Mr. Duncan Sandys) took the opportunity of the Conservative party conference at Bournemouth to refer to a new scheme for housing subsidies.

He pointed out that many council house tenants were having their rents subsidized above the level their earnings required. The subsidies were being paid by most ratepayers and taxpayers, and many of them were less well off than those receiving the subsidy. The Government were convinced that the present rate of housing subsidy was unnecessarily high and could be reduced without causing hardship to anyone. (The present general standard subsidy is £35 12*s.* per house per year; Exchequer contribution £26 14*s.* per year for 60 years; local authority contribution £8 18*s.* per house per year for 60 years.) Conversations are now proceeding between the Minister and the the local authorities with a view to framing a new scheme.

The Minister contemplates circulating information about differential rent schemes operated by other councils, to councils who, he thinks, may require to introduce such schemes in order to obviate hardship when the reduction in subsidy takes effect. One of the speakers from the floor of the house at the conference voiced fears that to charge economic housing rents would cause hardship. He went so far as to say that this course would result in adding 11*s.* a week to the rent of each council house. The general feeling of the conference, however, was clear, namely, that many people were being subsidized from public funds who had no need of such help. The point was validly made that the man striving to buy his own house was extended to the limit financially, but at the same time in many cases had to help the people better-off than himself in the subsidizing of council houses.

Behind the problem of the burden of housing subsidies there looms the equally substantial problem of the Rent Restriction Acts. The situation is fast being reached when the Government will have to tackle this as well.

Road Safety

The current issue of the *International Road Safety and Transport Review* contains some interesting articles and reports as to road safety in various countries. One of the reports, which was made for the second International Congress in Traffic Engineering, gives information as to accident rates on different types of roads in Belgium and the Netherlands. In Belgium, for daily volumes of between 4,000 and 5,000 vehicles, the three-lane roads have had a considerably lower accident rate than the two-lane roads; but for daily volumes of less than 4,000 or more than 5,000 vehicles, three-lane roads have had higher rates. A Belgian investigation showed that the widening from two-lane to three-lane roads may perhaps increase accidents. But the

construction of an express way free of intersections is likely to reduce accidents very considerably.

In reporting the proceedings at the assembly in Washington of delegates of the world touring and automobile associations, it is mentioned that the chairman of the Royal Automobile Club said the number of deaths per million vehicle miles in the five to 15 age groups in Britain last year, was one-third of the number in 1934, due, in his view, mainly to safety education in schools. A representative of the Netherlands said that lessons in safe cycling were given in many Dutch schools and certificates were awarded to children who passed the test. An American delegate said the new Juvenile Traffic Court in Washington, and the five night-traffic courses to which juvenile offenders were sent, had proved a great success. With regard to France it was reported that for the third time an "accident-free day" was held with the intention of reducing the number of accidents by intensified psychological preparation and greater activity on the part of the authorities. The results were satisfactory and only 12 fatal accidents occurred compared with an average of 25 on other Saturdays at the same time of the year. In Stuttgaart a children's traffic school has been set up and a model system of roads has been built in a large square not far from the city centre. This contains about half mile of asphalt roads complete with cycle tracks and footpaths; and 70 traffic signals. During the mornings this model road system is used exclusively for the instruction of classes of school children, while children between the ages of seven and 12 can use it during the afternoons, free of charge. Lessons are given by traffic officials. A school of traffic at which cyling tests are also organized, has 16 pedal motors, three wooden horses fitted with dials, 12 bicycles, tricycles and scooters.

THE CINEMATOGRAPH ACTS, 1909 AND 1952

Many of those who advise authorities responsible for cinema licensing have no doubt paid but little attention to the Cinematograph Act, 1952, on the principle that "sufficient unto the Day is the evil thereof." Now, however, that January 1, 1956, has been fixed for the coming into operation of the Act, some thought must be given to the changes which it introduces.

The principal effects of the new Act can be summarized very broadly as follows:

(*a*) To apply the licensing provisions of the Cinematograph Act, 1909, to cinema shows using 16 *mm.* non-inflammable film and organized on a commercial basis; the Secretary of State has drawn attention in Circular No. 150/55 dated September 30, 1955, to the desirability of moderation in the imposition of special conditions on the grant of licences for these 16 *mm.* shows, most of which are given in small halls.

(*b*) To introduce special safeguards for film shows organized wholly or mainly for children, *i.e.*, for children's cinema clubs.

The scheme of the Cinematograph Acts, 1909 and 1952, is to impose what amounts to an all-embracing control and then to introduce a series of exemptions to this general rule.

CINEMATOGRAPH EXHIBITION

Section 1 of the Cinematograph Act, 1909, commences "No cinematograph exhibition (as defined in the Cinematograph Act, 1952) shall be given unless . . ." then follow words which make necessary compliance with the relevant statutory regulations and the obtaining of a licence for the premises where the exhibition is held.

The definition in the Act of 1952 is important because all that follows is only applicable if the exhibition lies within the definition. This reads "cinematograph exhibition means an exhibition of moving pictures produced on a screen by means which include the projection of light" (s. 9).

The following are not, therefore, within the definition:

Film strips: these, much used for educational purposes, are not moving pictures.

Television: this, in all but a few sets, does not involve the projection of light.

Projection television is, however, included and the provisions of the Acts are applicable to it.

EXEMPTIONS IN THE ACT OF 1909

It is important to remember that the exemptions in s. 7 of the former Act apply in the case of cinematograph exhibitions brought under control for the first time by the later Act, *e.g.*, 16 *mm.* film shows. It will be recalled that the principal provisions of s. 7 are that:

(*a*) No licence is needed for premises used occasionally and exceptionally only and on not more than six days in any one calendar year. But the occupier must give seven days' notice to the licensing authority and the police, and must still comply with the regulations. Virtually, therefore, notice takes the place of an application for a licence.

(*b*) The Act has no application to an exhibition given in a private house to which the public are not admitted.

NON-COMMERCIAL EXHIBITIONS

Section 5 of the new Act of 1952 provides a series of exemptions for non-commercial exhibitions, and is primarily designed to produce a workable system of control over the showing of 16 *mm.* films. The section is not always easy to follow with its exclusions from exemptions, but considerable help can be derived from Home Office Circular No. 150/55.

The basic provision is the easily understood one that any cinematograph exhibition to which the public are not admitted or to which they are admitted without payment is an "exempted exhibition." As such:

(*a*) No licence is needed, nor does the exhibition count in calculating the six exhibitions which are permitted without licence (but after notice) under s. 7 of the Act of 1909. But this paragraph does not apply if the exempted exhibition involves the use of inflammable film (reg. 28 of the Cinematograph (Safety) Regulations, 1955) and a licence is needed in these cases.

(*b*) No consent is needed from the licensing authority for a children's show.

(*c*) The Cinematograph (Children) Regulations, 1955, do not apply: nor do the Cinematograph (Safety) Regulations, 1955, unless the exempted exhibition is given in premises licensed under the Act, *e.g.*, in a cinema, or in premises which have been licensed because inflammable film is to be used.

(*d*) If the exempted exhibition is given in premises licensed under the Act, the only conditions in the licence which will be applicable will be those relating to safety.

CHILDREN'S CINEMA CLUBS

The exemption just considered for shows to which the public are not admitted would make a licence unnecessary for films shown to persons who were members of a club. Such a showing would in law be a private one, and the exhibition would become an "exempted exhibition" within s. 5 (1). As one of the principal objects of the Act of 1952 was

to regulate the position with regard to children's cinema clubs, subs. (1) could not be left to stand on its own. Section 5 (2) therefore proceeds to exclude from its operation, any exhibition organized wholly or mainly for children who are members of a cinema club. The effect is to leave within the licensing requirements of the Act exhibitions organized on a commercial basis, *i.e.*, the genuine children's cinema club organized by a cinema proprietor or by a commercial exhibitor will need a licence. A children's cinema club which formed part of the activities of an educational or religious institution would not be caught by subs. (2) nor would an exhibition given in a private dwelling-house, both these being rated as "exempted exhibitions."

NON-PROFIT MAKING SOCIETIES

Societies, institutions, committees or other organizations who are able to obtain from the Commissioners of Customs and Excise a certificate that they are not conducted or established for profit, are in a special position.

They may admit members of the public to an exhibition upon payment, and the exhibition will in spite of the fact of payment, be an "exempted exhibition" and so enjoy the four privileges previously described. There is, however, a limit on the number of performances which may be given by these "exempted organizations" if they wish to keep within the exemption. The premises must not have been used on more than three out of the preceding seven days for the purpose of giving an exempted exhibition.

PROTECTION OF CHILDREN

The position of children in relation to cinema shows is safeguarded in three ways:

(*a*) By the Cinematograph (Children) Regulations, 1955, requiring children to be accompanied by persons of 16 or over in certain cases and specifying the number of attendants needed at exhibitions organized for children.

(*b*) By the duty of licensing authorities under s. 3 of the Act of 1952 to impose conditions in the admission of and display of films to children. The Home Office has issued Model Licensing Conditions which will be found in the appendix to Home Office Circular No. 150/55, and have pointed out the difficulties likely to arise from departure by licensing authorities from these model conditions.

(*c*) By requiring the consent of the licensing authority to be obtained for an exhibition organized wholly or mainly for children. Special conditions may be imposed on the grant of this consent.

A consent is virtually an additional licence and the rules for licences in s. 2 of the Act of 1909 apply—thus, for example, seven days' notice of the intention to apply for such a consent must be given to the licensing authority and the police, and a fee is payable (s. 4, Act of 1952).

APPEALS, ETC.

(*a*) The new Act, unlike the old, confers a right of appeal to quarter sessions (s. 5, Act of 1952). Home Office Circular No. 150/55 points out that there is no appeal against a condition imposed by virtue of s. 1 (1) of the Sunday Entertainments Act.

Quarter sessions may modify, confirm or reverse the decision of the licensing authority, in the same way as they can on an appeal from a court of summary jurisdiction.

(*b*) A music and dancing licence will not be required merely because music has formed part of a cinematograph exhibition, or been played within certain limits during the interval or between performances (s. 7, *ibid.*).

PRACTICAL EXAMPLES

It may be helpful to conclude with a few questions and answers which illustrate some of the points likely to arise in practice.

Q.1. The Wessex County Primary School have two 16 *mm.* film projectors for instructing pupils and a number of film-strip projectors for the same purpose. Do the school premises need licensing ?

A.1. Under no circumstances will a licence be required because of the use of film strips (s. 9, Cinematograph Act, 1952). The showing of films to schoolchildren only, no members of the public being present, will be an "exempted exhibition" under s. 5 of the Act of 1952. No licence will be required, nor will there be any special restrictions although the shows are wholly for children.

Q.2. The licensee of the "Rob Roy" has installed television in the Snug—does he need a licence ?

A.2. Unless he has installed projection television, the answer is "No" (*see* s. 9 of the Act of 1952) but a music licence would be required. If projection television were installed a licence is *prima facie* needed, but as long as there was no charge for admission, there would be an exempted exhibition (s. 5, *ibid.*) and in the case of projection television a music licence would not seem to be necessary (s. 7 (1), *ibid.*).

Q.3. A petrol company wish to show a training film to their operatives following lunch in a local hotel. Members of the public will not be admitted. Does the hotel need a licence ?

A.3. Not unless inflammable film is to be used (s. 5 (1), Act of 1952 and reg. 28, Cinematograph (Safety) Regulations, 1955). If inflammable film is used, only those regulations of the Secretary of State and those conditions in the licence which relate to safety will apply.

Q.4. A road safety film show on 16 *mm.* film is to be given in a parish hall. It is free and all comers have been welcomed.

A.4. No licence is needed, because though the public are to be admitted no charge is being made for admission and the exhibition is exempted under s. 5 (1).

Q.5. A school hall is to be used on six nights in the week to show 16 *mm.* films taken by a member of the staff on a foreign lecture tour. The show is public and there will be a charge for admission.

A.5. If there have been no other cinema exhibitions in the calendar year ("exempted exhibitions" will not count for this purpose) seven days' notice should be given under s. 7 of the Act of 1909. The premises will have to comply with the Cinematograph (Safety) Regulations, 1955, and any conditions notified by the licensing authority.

Q.6. A film society hold weekly 16 *mm.* film shows during the winter. Any member of the public can buy tickets for the series.

A.6. If the society can get a certificate from the Customs and Excise that they are non-profit making, they can give a weekly show without a licence, under s. 5 (3) of the Act of 1952.

Q.7. A village hall have been offered a regular weekly show by an itinerant exhibitor, who will charge spectators on a commercial basis.

A.7. The hall will have to be licensed (s. 1, Act of 1909). The licence could be applied for by the exhibitor (s. 2, *ibid.*). The hall will have to comply with part III of the Cinematograph (Safety) Regulations, 1955, and any conditions specially imposed by the licensing authority. J.K.B.

MORE ODDMENTS FROM THE "J.P."

By THE REV. W. J. BOLT, B.A., LL.M.

(*Continued from p. 668, ante*)

The early volumes record much litigation on the historic form of tenures by services. Page 494 of the volume of 1844 contains two reports of suits brought on such tenures.

"*Doe d. Edney* v. *Benham*. In this case, which was an action brought by the churchwardens of Whitchurch for the recovery of a cottage alleged to belong to the parish and in the occupation of the defendant, the verdict was entered for the plaintiffs, with leave reserved to the defendant to enter a non-suit. The evidence showed that the cottage had been occupied by the defendant for considerably more than 20 years, that rent had never been paid nor demanded, but that the defendant swept the church. It was objected that there had been an adverse possession for more than 20 years. To this it was answered that the sweeping of the church was in lieu of rent and that the church had been swept within 20 years. The reply was that there was not any evidence to connect the sweeping with the tenancy. Rule *Nisi*."

"*Doe d. Edney* v. *Willett*. The case was similar to the last, except that the alleged rent was by ringing a bell. In this case, a lease of the year 1752 was put in for the purpose of raising another point. The lease was granted by the mayor and burgesses of the borough of Whitchurch and the churchwardens of the same parish. The service received was ringing the bell. In case of neglect and continued disrepair, the estate was to determine. There was also a covenant to surrender the cottage to the mayor and burgesses, etc., or their successors. The lease was for 21 years, and the plaintiffs did not show the commencement of the tenancy. The tenant was an old man, and has since died at the age of 88. It was suggested by the counsel for the defendants, that the demise by the churchwardens was wrong."

In 1844, Parliament wiped off the statute-book the celebrated mediaeval enactments against profiteering; and the achievement provided the editor with a theme for a characteristic homily, at p. 659. He dilated on the "recent Act to abolish the offences of forestalling, re-grating, engrossing, and badgering." "The first section states that after the passing of this Act, the several offences shall be utterly taken away and abolished; and that no information, indictment, suit or prosecution shall lie either at common law or by virtue of any statute, or be commenced or prosecuted for, or by reason of any of the said offences or supposed offences." A subsequent section provides that "nothing in this Act contained, shall be construed to apply to the offence of knowingly and fraudulently spreading or conspiring to spread any false rumour with intent to enhance or decry the price of any goods or merchandise, or to the offence of preventing or endeavouring to prevent by force any goods, wares, or merchandise being brought to any fair or market."

"Before bidding a final adieu to these favoured crimes of our ancestors it may not perhaps be altogether useless to remind our readers of what these offences really were. Forestalling is an offence at common law, and consists of buying or contracting for, any merchandise or victual coming in the way to market, and dissuading persons from bringing their goods or provisions there, or persuading them to enhance the price when there, any of which practices make the market dearer to the fair trader. Re-grating is the buying up of corn or other dead victual in the market, and selling it again in the same market or within four miles of the same place. For that also enhances the price of the provisions, as every successive seller must have a successive profit. Engrossing is the getting into one's possession or buying up of large quantities of corn or other dead victuals with intent to sell them again. This must of course be injurious to the public by putting it in the power of one or two rich men to raise the price of provisions at their own discretion. Badgering, in law, is the buying of corn or victuals in one place and carrying them to another to sell and make profit by them.

"It is not a little curious to observe the change of opinion which in modern times has taken place upon the subject of the foregoing offences. Thus, at the commencement of this century, we find Lord Kenyon in the case of *The King* v. *Waddington*, which was an indictment against the defendant for engrossing hops, saying 'he considered the offence to be one of the greatest magnitude, against general morality and the law of this country.' The defendant was a most respectable person and had purchased a large quantity of hops as a speculation, and with a view to a rise in their price. For this he was indicted on two indictments at the Worcester Assizes in 1799 and was found guilty. On being called up for judgment, a motion was made in arrest of judgment, and the entire law of the case was very fully gone into. The judges, however, were unanimous in opinion that this was a very grave and wicked offence, and they marked their sense of its great enormity by a most exemplary punishment. They fined the defendant £500 and imprisoned him for some months. The cases are reported in 1 East. 166."

Appeals from the decisions of Revising Barristers were rare when the suffrage was restricted. One of the earliest of such appeals reported in the "J.P." is in the 1845 volume, at p. 57, the case of *Simpson* v. *Wilkinson*. The appeal was heard in the Court of Common Pleas, and raised a novel point. "It appeared that the persons appointed as bedesmen to a freehold hospital, possessed the exclusive use of a room of the annual value of £4, none of whom had ever been removed during life. No deed or other document could be found relating to the hospital, nor was there any record or seal evidencing its being incorporated, but the rules of regulation referred to certain feoffees and their heirs. The persons nominated were to be presented to the vicar on a Sunday in the church, and by him to be allowed as of honest Christian profession, and able and well-disposed to say the Lord's Prayer, the Creed, and the Ten Commandments, and no one was to be admitted who was known to be diseased of leprosy, etc., or to have committed certain notable vices, for which also and for card-playing they were removable. Held, that these circumstances warranted a presumption of a legal foundation other than that of incorporation, and that the bedesmen enjoyed freehold estates in their rooms."

Practical Points continuously gives us a fair picture of contemporary law, and further discloses the perplexities of those who were set to enforce and administer it. A typical query of the period appears at 1845, p. 63. "Swearing. You will oblige me by informing me in your paper whether the word 'God' is essential to constitute the offence of 'profane swearing,' so as to subject the offender to a fine. A youth engaged in creating a disturbance on a Sunday was summoned by a magistrate for profane swearing by saying to the constable repeatedly, 'Damn you! Who cares for you?' At a petty sessions where the complaint was heard and dismissed, it was decided that, inasmuch as the complainant could not positively swear that the name

of God had been used, there was no proof of defendant having committed an offence which subjected him to a fine. P.C." "The words uttered are not, we think, profane cursing or swearing. The name of God must in some terms or other be introduced in order to give words the character of profane swearing; and, as to cursing, the expression must constitute an imprecation or call for evil upon some person or persons, from the Supreme Being."

An astonishing case in the Court of Queen's Bench is recorded in 1845 at p. 83.

"*Q.* v. *Vicar of Bassingbourne. Mandamus.* Refusal to bury a child that had only been baptized by a dissenting minister. Demand and refusal.

"Cooke Evans applied for a *mandamus* peremptory in the first instance, commanding the vicar of Bassingbourne to bury the body of one of his parishioners. The affidavit, according to the recital of them in arguments, set forth the death of the child in the year 1840, the expression by the vicar of his determination not to perform the burial service on the body of a person only baptized by a dissenting minister, the fact that the body of the child had been carried within the usual period to the porch of the church when a message had been sent to the vicar, who had refused to attend and perform the service, the fact that the body of the child had remained unburied ever since, enclosed in a double coffin in a room inhabited by six persons, another and equally unsuccessful application to the vicar in the year 1841 after the decision of the Privy Council in the matter of the Rev. Mr. Escott, an application to the proper ecclesiastical court, and finally, the decision of the judge of the court of Arches, so far not condemning the conduct of the vicar that it pronounced the complaining party not to have a *locus standi* because 'convenient warning' had not been given to the vicar.

"Coleridge J. Your application is to read the burial service?

"Evans. To bury, which includes reading the burial service. It is only in the case of the deceased having been legally found *Felo De Se* that the burial service may be omitted, and that is by statute 4 Geo. IV. This *mandamus* peremptory in the first instance, is the proper remedy, as is shown by a case in *Palmer* and 8 Mod.

"Patterson. Has any application been made since the decision in the court of Arches?

"Evans. None.

"*Per Curiam.* We require application and refusal in respect of the identical act for commanding the performance of which the *mandamus* is asked, and in this case, we are the more bound to insist on this rule that the decision of the ecclesiastical court is made to rest on the fact that convenient warning has been given."

In the same year, 1845, legal circles were a-flutter over an issue of constitutional law which has now become obsolete, one of the privileges anciently claimed by the peerage. A summary of the hearing which raised the issue, appears at p. 101.

"Queen's Bench. *Ex p. Lord Gifford and his sureties.* An application for *certiorari* to bring up certain recognisances to keep the peace, which had been taken by Lord Gifford and two sureties (The Earl of Radnor and the Rev. William Cleaver, both of whom were magistrates) to quash them, on the ground that 'a magistrate has no power to take recognisances to keep the peace, from a peer of the realm.'" Many precedents were cited in support of the argument; but a lengthy editorial at p. 273, fiercely disputed the immunity claimed by the peer.

Sentences of transportation were still creating matrimonial tangles in 1845. One was submitted to the "J.P." at p. 205.

"Marriage: transportation for life; effect of on. AB who had a wife and three children was sentenced to transportation for life in 1837, on a conviction for manslaughter, but owing to his illness, he was detained in the county prison until February, 1840, when a pardon was obtained for him and he was liberated. In 1839, the wife of AB inter-married with CD, it being not known that a pardon would be obtained for the convict. She lived with CD till AB was liberated from prison. She was delivered of a child in 1840, shortly after which AB took his wife and the said three children and continued to live with them till the present time. Both AB and his wife deserted the child born in 1840, when it was taken to the union workhouse and has remained there ever since. The child has not been affiliated. Your opinion is requested whether AB is liable to maintain the said child born in 1840. If AB is not liable, can the mother be punished under 7-8 Vict., c. 101, s. 6, for deserting the said child; and if not, can you advise any means to relieve the parish of the said child? G.H.F."

Occasionally, queries reflect the uncertainty produced by the propaganda for more humane treatment of the lower animals, and by the interpretation of the early statutes that sought to protect them. This nervousness is clearly reflected in the inquiry at p. 222 of the volume for 1846.

"Cruelty to Animals; Construction of Act. In a market town, an Italian so severely and cruelly beat a monkey as to produce a general feeling of annoyance, and a gentleman called a constable and carried the Italian before a magistrate. The Italian alleged in defence that the monkey, being teased by children, bites the first child he can get at. In these days of magisterial difficulty, it was doubted whether 5-6 Will. IV, 59, 2, gave the magistrate jurisdiction in this case of cruelly beating a monkey. Be pleased to express your opinion, and also if the magistrate will not do rightly in charging the constable's demand to the parish under 5-6 Vict. c. 109, s. 17, as an occasional duty. R.B." "The Act 5-6 Will. IV, c. 59, s. 2, will not permit of a conviction for ill-treating, etc., a monkey. Only the animals specifically mentioned in it are within its provisions. *See* 7 J.P. 533, 541, where this subject is discussed. It may possibly include a cat, but even that is questionable, so strictly have the decisions kept to the legal rule with respect to general words following specific ones. We cannot by any means advise a conviction."

The interpretation of the Sunday Observance Acts was in every decade a troublesome source of misgiving. In the 1840's, Sunday cricket appeared to command wider popularity than it has gained this century. The "J.P." consistently supported this trend, as the answer in 1846 at p. 490 shows.

"Lord's Day; Desecration of. The inhabitants of D are much annoyed and scandalized by a practice which has now become very common of large parties assembling in the fields adjoining the town to play cricket on Sundays. Can you advise how this evil practice can be put a stop to? The magistrates say they can only do so by putting in force an obsolete statute against parties for not attending church, or by considering cricket as not among the list of the lawful games of James, neither of which do they think it convenient to enforce at this time of day. The fields are regularly let for the purpose. Can the owners or occupiers be proceeded against in any way? A Subscriber."

"The justices are right in not interfering with this practice under the statute of Charles, and prudent not to apply to it the statute of Elizabeth for neglecting to attend a place of worship. We beg to refer our correspondent to 6 J.P. 610, 691, upon the whole point and where we state, as we do now, that if the game is so carried on as to become a nuisance to the neighbourhood, it is indictable."

(*To be continued.*)

THE CHAIR AND THE ALLOWANCE

The case of Councillor Gibbs of Ashford, reported in *The Times* of August 19, 1955, brought us some inquiries and some expressions of surprise—not so much at the result as in relation to the statement said to have been made in evidence and emphasized by Lord Hailsham, the defending counsel, that Mr. Gibbs had (in effect) been led into a trap by the Ministry of Health. To this aspect we shall return below. The prosecution was of a councillor for contravention of s. 76 of the Local Government Act, 1933, by voting for himself as chairman, when there was in existence a resolution of the urban district council under s. 116 of the Local Government Act, 1948, granting the chairman an allowance. A few days before the case was heard, we had already been asked whether it was an offence for a councillor to vote for his own appointment to the chairmanship, some of the newspapers having reported that a summons had been issued for this alleged offence. Of course, such a vote is not in itself prohibited by statute; the whole point of the prosecution was the infringement, in the opinion of the Director of Public Prosecutions, of s. 76 of the Local Government Act, 1933, inasmuch as the position carried an allowance. We do not remember to have been asked to advise, through our Practical Points column, upon this point, but we have been told that counsel has advised one of the local government associations that there is in such a case an interest which disables a councillor from voting for himself, and we should have expressed the same opinion if we had been asked. We do not know whether the Case Stated, said in some newspapers to have been asked for, will proceed, so we say no more about the purely legal point.

Upon the matter mentioned above as having caused concern among correspondents who asked us to look into it, the Ministry of Health, following the settled practice of the Local Government Board, would normally have answered any request for an opinion by saying that the point could be decided by the courts alone: that it would therefore be unfair for the Minister to express an opinion one way or the other—if he advised that a councillor was not disabled from voting, the councillor might still be prosecuted (and this was what was stated to have happened in the Ashford case), while if he advised that the councillor was disabled the effect, if the advice was wrong, would have been to prevent the councillor from doing something he was entitled to do.

Nevertheless, the clerk of the council in reply to Lord Hailsham, "agreed that he had shown Mr. Gibbs a letter from the Ministry of Health stating that he was free to vote in the election of chairman," and Lord Hailsham remarked in his speech for the defence: "The Ministry of Health takes one view and the Director of Public Prosecutions the other. One wishes they could settle their differences—without involving Mr. Gibbs—out of court." As we have just said, it would have been contrary to the practice prevailing since the Local Government Board came into existence in 1871, for the board's successors to advise in such a sense, but there was another reason why this newspaper account struck us on first reading as peculiar: why (in 1954 or 1955) the Ministry of Health?

That Ministry ceased to be concerned with such matters in 1951, and since November 3, 1951, the Minister of Housing and Local Government has been responsible for business which had formerly gone to the Minister of Health under s. 76 of the Local Government Act, 1933.

We therefore communicated with the clerk of the urban district council, by whose courtesy we have been furnished with the actual correspondence between him and the Ministry of Housing and Local Government, which shows that Lord Hailsham was labouring under some misapprehension. No public purpose would be served by analysing here the sources of misunderstanding beyond mentioning that the clerk's letter was written on July 11; it was not apparently recognized in the Ministry as relating to an election which normally would have already taken place. The correspondence reveals a comedy of errors. In one sense at least this is satisfactory, for it would have been a lamentable thing if the Ministry had led Mr. Gibbs or anybody else into a trap. The old practice set out early in this article is the only line of safety and of justice.

ADDITIONS TO COMMISSIONS

BURTON-ON-TRENT BOROUGH

Basil Owen Clements, 6, St. Pauls Square, Burton-on-Trent.
Mrs. Mary Margaret Osborne, 183, Newton Road, Burton-on-Trent.
Joseph Parry, 28, Mount Street, Winshill, Burton-on-Trent.
Mrs. Gertrude Elizabeth Radford, 100, Shobnall Road, Burton-on-Trent.
Charles Watson Shepherd, 70, Belvedere Road, Burton-on-Trent.
Daniel Dempsey Wallace, Silver Hill, Barton under Needwood, Burton-on-Trent.

GLAMORGAN COUNTY

Mrs. Hannah Eithwen Davies, Gravel Bank, High Street, Pontardawe.
David Richard Dawkins, St. Elmo, Llantwit Fardre, nr. Pontypridd.
Miss Margaret Emily Edwards, Bedlinog Farm, Bedlinog.
William Reginald Francis, 6, Charles Street, Neath.
Granville George, 3, Tygwyn Road, Clydach, Swansea.
Mrs. Edith Gwendoline Heath-Davies, Arnedd, Hillside, Neath.
Mrs. Florence Elizabeth Hinton, Southgate, Cowbridge.
David Hull, 6, Heol Herbert, Resolven, Neath.
Elliott Humphreys, Arbroath, Longford Crescent, Penyard, Neath.
Howell Jones Jeffreys, Brynheulog, Crynant, Neath.
William David Jones, 26, Salem Terrace, Llwynypia, Rhondda.
John Dewi Maddox, 1, Fyfe Street, Abercynon.
Mrs. Dorothy Eurfron Richards, Llwyn-yr-Eos, Treherbert.
William Ivor Thomas, 9, Gnoll Avenue, Neath.
Albert Ernest Vowles, Highbury, Parish Road, Cwmgwrach, Neath.
David Clifford Williams, Rock Shop, Grose Street, Cwmgorse.

KENT COUNTY

Mrs. Margaretta Rowena Marion Barrington, Cotnam's House, Hollingbourne.

LINCS. (PARTS OF LINDSEY) COUNTY

Mrs. Freda Mary Armour, Tasburgh Lodge, Victoria Avenue, Woodhall Spa.
Edward Mason Badley, Partney Road, Spilsby.
The Hon. Mrs. Edith Ellen Cuthbert, 6, Cliff Gardens, Scunthorpe.
Robert Dowlman, Church Hill, Riby, Grimsby.
Leslie Hornsby, 84, Burringham Road, Scunthorpe.
Robert Alexander Stewart Millogan-Manby, Thorganby Hall, Grimsby.
Dr. Cuthbert Francis Edward Stanford, 86, Glover Road, Scunthorpe.
Thomas Arthur Saul, 26, Albert Avenue, Skegness.
Captain John Denis Telford Williamson, 22, Seathorne Crescent, Skegness.

WEST HARTLEPOOL

Charles William Ormond, 115, Cornwall Street, West Hartlepool.
Harry John Sargeant, Stone Grange, Coniscliffe Road, West Hartlepool.

THE FREEDOM OF A BOROUGH

There are really two different kinds of freedom that may be granted by a borough—" ordinary " and " honorary." In this article it is proposed to discuss these two kinds, and the allied privileges which it has become customary for boroughs to confer on service units, both from the legal and the ceremonial aspects.

1. " *Ordinary* " *Freedom*

The grant of the freedom of a borough was formerly a highly prized privilege, often carrying with it freedom from liability to pay borough market and other tolls; now a freeman of a borough may have commoners' rights and be entitled to share in the profits of common lands and public stock owned by the borough, but otherwise he will be liable to pay rates and subject to other dues as any other burgess of the borough. The only possible ways at the present day of becoming an " ordinary " freeman are by birth, servitude or marriage, admission by gift or purchase having been abolished (Local Government Act, 1933, s. 259 (1)), but the details of the claim will be regulated by local custom, and each claim for admission as a freeman must be examined and adjudicated upon by the mayor (Local Government Act, 1933, s. 261)—for example, in London, a freeman's son is only entitled to be admitted as a freeman provided he was born after the father had acquired his freedom.

Admission as an ordinary freeman calls for no special ceremony; most boroughs issue a certificate of admission (on which a stamp duty was formerly payable, but this has now been abolished: Finance Act, 1949), and the town clerk must enroll the freeman's name on the freeman's roll, where one is kept (Local Government Act, 1933, ss. 260 and 261).

2. " *Honorary* " *Freedom*

Section 259 (2) of the Local Government Act, 1933, repeating the provisions of the Honorary Freedom of Boroughs Act, 1885, provides that the council of the borough may admit to be honorary freemen of the borough " persons of distinction and any persons who have rendered eminent services to the borough." The resolution must be passed by not less than two-thirds of the members voting (preferably, of course, the vote should be unanimous) at a meeting of the council specially convened for the purpose with notice of the object.

In practice, as a special council meeting has to be convened in any event, the ceremony of presenting the freedom normally is arranged to take place at the council meeting itself, and the grant of the freedom is usually embodied in an illuminated scroll under the council's seal and is handed to the new freeman in an ornamental casket or frame. The cost of such a scroll and casket or frame, although perhaps not essential expenditure, is customarily charged to the general rate fund, and would not (if reasonable) normally be queried by a district auditor. Expenditure on the entertainment of guests invited to attend the ceremony would, however, be more open to question—reasonable decoration of the council chamber, any special fittings required, etc., would probably be a legitimate charge to the rate fund, but the cost of refreshments and other " hospitality expenses " are normally borne by the mayor, and paid—ostensibly at least—out of the salary he receives under s. 18 (4) of the 1933 Act. Some boroughs have local Act powers to pay all reasonable expenses in connexion with the presentation of an honorary freedom: as, *e.g.*, have the Berkshire boroughs under s. 162 (*d*) of the Berkshire County Council Act, 1953.

3. *Freedom of Entry*

Since the second world war, the custom has become popular of giving the " Freedom of Entry " (sometimes loosely termed the " Honorary Freedom ") to a borough, to a regiment or unit of Her Majesty's Forces. Obviously " freedom " in the personal sense cannot be given to an unincorporated association of persons having no legal entity, but a need to honour a ship of the Royal Navy, a shore establishment, a regiment or air station or unit, has been felt by many boroughs, and the powers of s. 259 (2) of the 1933 Act have been—somewhat freely—adapted for the purpose.

A resolution is passed by the council—not necessarily at a special meeting, for this is not a grant of the freedom in the strict sense—to the effect that the " XYZ Regiment " should be accorded the " title, privilege, honour and distinction of marching through the streets of the borough on all ceremonial occasions with swords drawn, bayonets fixed, colours flying, drums beating and bands playing." The grant of these somewhat empty " rights " is embodied in a scroll, and this is presented to the commanding officer at a ceremony—sometimes in the council meeting, but more often at a subsequent outdoor parade when troops can be present; and the right is then exercised by bayonets being fixed, the colours unfurled, etc.

This can make a very moving and colourful ceremony, and may be one which will create a most useful liaison between the service and the civic authorities, for their mutual benefit. There does not seem to be any express legal sanction for expenditure to be charged to the rates for such an event, except where local Act provisions exist empowering the borough council to incur expenditure in connexion with public ceremonies and the entertainment of distinguished persons. The commanding officer is customarily asked to sign the freeman's roll, but he is not usually asked to take the freeman's oath (where one is customarily administered to a new freeman), and it is a little difficult to argue that the ceremony can be brought within s. 259 (2) of the 1933 Act. Still, provided the expenses are reasonable, and the mayor pays for the " hospitality " expenses, we think it unlikely that the district auditor would query the legality of the expenditure—in any event, no doubt the Minister's sanction could be obtained under s. 228 (1) of the 1933 Act.

If the ceremony does not take place at the council meeting, it will be desirable for the council to pass a resolution declaring attendance at the ceremony to be an " approved duty " under s. 115 of the Local Government Act, 1948, as being the doing of " a thing " in connexion with the discharge of the functions of the " body "—it is surely part of the functions of a borough council to foster good relations between the Armed Forces of the Crown and their own townspeople. Members of the council attending the ceremony will then be able to claim financial loss allowance under the 1948 Act.

4. *Adoption*

Yet a further ceremony has become popular in recent years—the " adoption " by a borough council of a local service unit, usually of the Territorial Army. The ceremony is usually similar to, but on a smaller scale than, that for a " freedom of entry " grant, and expenditure thereon is, of course, more difficult to justify on legal grounds. The significance of " adoption " is not entirely clear, but it is usually understood as signifying a close link between the town and the unit, and it may subsequently

be demonstrated by such features as the unit forming a guard of honour for the mayor on Mayor's Sunday, etc. "Adoption" of a territorial unit may assist in a local recruiting campaign, and the consequent attendance of the mayor and other civic dignitaries at the regimental dinner or other similar function should increase public interest in the welfare and activities of the local unit.

We have commented before on the value of civic ceremonial in local government; the particular ceremonies of the type we have discussed in the last two paragraphs have the further merit, in our view, of furthering public interest in the Armed Forces of the Crown.

5. *Urban Districts*

Urban district councils cannot confer the "freedom" of the district, but they may nonetheless wish to honour in some way a person of distinction or one who has rendered meritorious services to the town. On occasion, therefore, the council may decide to present the individual concerned with an "illuminated address," recording a formal resolution of appreciation passed by the council. There seems to be no authority for any such expenditure to be charged to the general rate fund—apart from local legislation or possibly ministerial sanction under s. 228 (1) of the Local Government Act, 1933—and, therefore, in practice, the whole of the expenses will probably have to be met by the chairman of the council out of his allowance paid under s. 116 of the Local Government Act, 1948. In this connexion, the remarks made by Romer, J., in *Att.-Gen.* v. *Cardiff Corporation* [1894] 2 Ch., at p. 342, should be remembered: "the corporation is undoubtedly entitled to make a reasonable addition to the mayor's salary if it be anticipated that in his year of office, by reason of the occurrence of some event of national importance, his expenditure as mayor in festivities and so forth may be increased." J.F.G.

MISCELLANEOUS INFORMATION

THE COUNTY OF DERBY— CHIEF CONSTABLE'S REPORT FOR 1954

This is an elaborately prepared and detailed report containing a great deal of information which cannot be referred to in a brief summary.

In his preface, the chief constable makes various comments of general interest. He notes, for example, that "police reports on serious accidents make distressing reading, *especially when one realizes that so many of them need never have happened.*" After dealing with various matters relating to road accidents he states that the police do not despair but persist in the hope that their propaganda to young people will have a long-term effect. All will agree with his statement that there can be no sympathy for the drunken driver, whatever his position or whatever happens to him. He adds that there is no excuse for this offence. Unfortunately, the figures in the report show that there were 64 such charges in 1954 compared with 37 in 1953. Three of the charges were dismissed, and one defendant was committed for trial. In the remaining 60 cases, summary convictions resulted.

The chief constable comments on the manpower shortage in his force. On December 31, 1954, there were 705 serving officers, and there were 134 vacancies. Housing difficulties do not account for the shortage; a married man can be offered a house within a few months. His view is that the pay is inadequate to compensate for the hours of duty and the necessary conditions of police service. He states that men can earn considerably more in industry and on the land, and in those occupations can normally have all their nights in bed and their week-ends free. The promise of a pension in 25 years' time does not outweigh the present disadvantages of police service. In the chief constable's view, the pay must be made at least equal to that which the right type of man for the police service can earn in industry. Meantime the effect of the manpower shortage is being overcome only by the extra duties uncomplainingly undertaken by serving members, supported by the special constabulary.

We note in this report a point which we have seen in other reports. One hundred and seventy-one male constables in the force have qualified, both in education and police duty, for promotion to sergeant. The total authorized establishment of sergeants is only 98. It seems as though many of the 171 will have to wait a long time before promotion comes their way

The chief constable hopes for an annual entry into the force of approximately 20 former cadets. The cadets do useful work in manning stations and so liberating constables for other duties. Their authorized establishment has been increased to 33.

A good deal of police time had to be given to providing police escorts for 578 of the 1,710 abnormal loads of which notification was received during the year. Such escorts, though the men can ill be spared, are necessary to avoid traffic congestion and to prevent accidents.

The rising cost of everything is reflected in the figure of police expenditure. The actual expenditure in the county in 1951, 52, and 53 was £628,780, £642,791 and £763,098. The probable expenditure for 1954 is given as £814,000.

The number of crimes known to the police in 1954 was 480 fewer than in 1953, and the percentage of detection was 70·2. The force is still hoping to get back to its pre-war rate of 85·1 *per cent.* Juveniles were responsible for 1,063 of the 2,930 detected crimes, 36·3 *per cent.* The same complaint is voiced as has appeared in so many other reports, that the public will not take reasonable care to protect their property from thieves. In particular, it is stated that the simple precaution of removing the ignition key and of locking vehicle doors would do much to discourage the car thief. For non-indictable offences there were, in 1954, 10,199 prosecutions and 2,732 cautions. The 1953 figures were 10,488 and 2,119.

Two hundred and eight sheep, 664 poultry and three cattle were killed or injured by dogs during the year. Much of this loss could probably be prevented if dog-owners took more care.

There is much more information in this report, but we have no space to deal further with it.

CARDIFF PROBATION REPORT

The report of the probation committee for the city of Cardiff for 1954 records a welcome decrease in juvenile delinquency.

Indictable offences show a decrease of 51 (18·3 *per cent.*) on the total for 1953. There were 131 cases of stealing, 31 less than in 1953 when 162 cases were recorded. The number of breaking and entering cases (45) was 15 less than that of the previous year. Non-indictable offences show a decrease of 91 (24 *per cent.*). Of the 75 children conditionally discharged and the 50 absolutely discharged, about 38 *per cent.* were ordered to pay costs, compensation or damages.

There is an interesting survey of the results of probation over a period of many years. The report quotes a statement in a legal journal in 1927 that about 50 *per cent.* real and lasting successes would be as much as could be hoped for under present conditions.

So far as Cardiff is concerned, a summary of the figures kept during the 30 years 1920–49 gives the following picture: "An average of 125 cases expired each year. During the five years following the making of the orders, just over 30 *per cent.* of the probationers reappeared for indictable offences and nearly 17 *per cent.* for non-indictable offences. About 53 *per cent.* did not reappear.

"Within the figures of those who reappeared different averages prevail for juveniles and adults. About 49 *per cent.* of the juveniles returned to court; this included 33 *per cent.* for indictable offences and 16 *per cent.* non-indictable. Of the adults, about 36 *per cent.* returned, including 20 *per cent.* for indictable offences and 16 *per cent.* for non-indictable.

"If we regard the indictable offences as generally more serious than the non-indictable, the figures suggest that probation appears to be satisfactory with about two-thirds of the juveniles and four-fifths of the adults. The indications are that over a five-year period after being placed on probation, two out of the three probationers make good."

There was a high percentage of apparent successes in reconciling the parties in matrimonial cases. Of 158 cases completed, apparent success was obtained in 102, or 64·6 *per cent.*

EAST HAM WEIGHTS AND MEASURES REPORT

The reports of inspectors of weights and measures frequently call attention to the need for legislation to bring the law into a more up-to-date condition in various respects. In his annual report, Mr. Leonard E. Kirk, chief inspector to the county borough of East Ham, refers to the inadequacy of maximum penalties. It needs little imagination, he says, to compare the value of the £5 penalty fixed in 1878 with its value today. That is true enough, but it applies to a great

THE FREEDOM OF A BOROUGH

There are really two different kinds of freedom that may be granted by a borough—" ordinary " and " honorary." In this article it is proposed to discuss these two kinds, and the allied privileges which it has become customary for boroughs to confer on service units, both from the legal and the ceremonial aspects.

1. " *Ordinary* " *Freedom*

The grant of the freedom of a borough was formerly a highly prized privilege, often carrying with it freedom from liability to pay borough market and other tolls; now a freeman of a borough may have commoners' rights and be entitled to share in the profits of common lands and public stock owned by the borough, but otherwise he will be liable to pay rates and subject to other dues as any other burgess of the borough. The only possible ways at the present day of becoming an " ordinary " freeman are by birth, servitude or marriage, admission by gift or purchase having been abolished (Local Government Act, 1933, s. 259 (1)), but the details of the claim will be regulated by local custom, and each claim for admission as a freeman must be examined and adjudicated upon by the mayor (Local Government Act, 1933, s. 261)—for example, in London, a freeman's son is only entitled to be admitted as a freeman provided he was born after the father had acquired his freedom.

Admission as an ordinary freeman calls for no special ceremony; most boroughs issue a certificate of admission (on which a stamp duty was formerly payable, but this has now been abolished: Finance Act, 1949), and the town clerk must enroll the freeman's name on the freeman's roll, where one is kept (Local Government Act, 1933, ss. 260 and 261).

2. " *Honorary* " *Freedom*

Section 259 (2) of the Local Government Act, 1933, repeating the provisions of the Honorary Freedom of Boroughs Act, 1885, provides that the council of the borough may admit to be honorary freemen of the borough " persons of distinction and any persons who have rendered eminent services to the borough." The resolution must be passed by not less than two-thirds of the members voting (preferably, of course, the vote should be unanimous) at a meeting of the council specially convened for the purpose with notice of the object.

In practice, as a special council meeting has to be convened in any event, the ceremony of presenting the freedom normally is arranged to take place at the council meeting itself, and the grant of the freedom is usually embodied in an illuminated scroll under the council's seal and is handed to the new freeman in an ornamental casket or frame. The cost of such a scroll and casket or frame, although perhaps not essential expenditure, is customarily charged to the general rate fund, and would not (if reasonable) normally be queried by a district auditor. Expenditure on the entertainment of guests invited to attend the ceremony would, however, be more open to question—reasonable decoration of the council chamber, any special fittings required, etc., would probably be a legitimate charge to the rate fund, but the cost of refreshments and other " hospitality expenses " are normally borne by the mayor, and paid—ostensibly at least—out of the salary he receives under s. 18 (4) of the 1933 Act. Some boroughs have local Act powers to pay all reasonable expenses in connexion with the presentation of an honorary freedom: as, *e.g.*, have the Berkshire boroughs under s. 162 (*d*) of the Berkshire County Council Act, 1953.

3. *Freedom of Entry*

Since the second world war, the custom has become popular of giving the " Freedom of Entry " (sometimes loosely termed the " Honorary Freedom ") to a borough, to a regiment or unit of Her Majesty's Forces. Obviously " freedom " in the personal sense cannot be given to an unincorporated association of persons having no legal entity, but a need to honour a ship of the Royal Navy, a shore establishment, a regiment or air station or unit, has been felt by many boroughs, and the powers of s. 259 (2) of the 1933 Act have been—somewhat freely—adapted for the purpose.

A resolution is passed by the council—not necessarily at a special meeting, for this is not a grant of the freedom in the strict sense—to the effect that the " XYZ Regiment " should be accorded the " title, privilege, honour and distinction of marching through the streets of the borough on all ceremonial occasions with swords drawn, bayonets fixed, colours flying, drums beating and bands playing." The grant of these somewhat empty " rights " is embodied in a scroll, and this is presented to the commanding officer at a ceremony—sometimes in the council meeting, but more often at a subsequent outdoor parade when troops can be present; and the right is then exercised by bayonets being fixed, the colours unfurled, etc.

This can make a very moving and colourful ceremony, and may be one which will create a most useful liaison between the service and the civic authorities, for their mutual benefit. There does not seem to be any express legal sanction for expenditure to be charged to the rates for such an event, except where local Act provisions exist empowering the borough council to incur expenditure in connexion with public ceremonies and the entertainment of distinguished persons. The commanding officer is customarily asked to sign the freeman's roll, but he is not usually asked to take the freeman's oath (where one is customarily administered to a new freeman), and it is a little difficult to argue that the ceremony can be brought within s. 259 (2) of the 1933 Act. Still, provided the expenses are reasonable, and the mayor pays for the " hospitality " expenses, we think it unlikely that the district auditor would query the legality of the expenditure—in any event, no doubt the Minister's sanction could be obtained under s. 228 (1) of the 1933 Act.

If the ceremony does not take place at the council meeting, it will be desirable for the council to pass a resolution declaring attendance at the ceremony to be an " approved duty " under s. 115 of the Local Government Act, 1948, as being the doing of " a thing " in connexion with the discharge of the functions of the " body "—it is surely part of the functions of a borough council to foster good relations between the Armed Forces of the Crown and their own townspeople. Members of the council attending the ceremony will then be able to claim financial loss allowance under the 1948 Act.

4. *Adoption*

Yet a further ceremony has become popular in recent years—the " adoption " by a borough council of a local service unit, usually of the Territorial Army. The ceremony is usually similar to, but on a smaller scale than, that for a " freedom of entry " grant, and expenditure thereon is, of course, more difficult to justify on legal grounds. The significance of " adoption " is not entirely clear, but it is usually understood as signifying a close link between the town and the unit, and it may subsequently

be demonstrated by such features as the unit forming a guard of honour for the mayor on Mayor's Sunday, etc. " Adoption " of a territorial unit may assist in a local recruiting campaign, and the consequent attendance of the mayor and other civic dignitaries at the regimental dinner or other similar function should increase public interest in the welfare and activities of the local unit.

We have commented before on the value of civic ceremonial in local government; the particular ceremonies of the type we have discussed in the last two paragraphs have the further merit, in our view, of furthering public interest in the Armed Forces of the Crown.

5. *Urban Districts*

Urban district councils cannot confer the " freedom " of the district, but they may nonetheless wish to honour in some way a person of distinction or one who has rendered meritorious services to the town. On occasion, therefore, the council may decide to present the individual concerned with an " illuminated address," recording a formal resolution of appreciation passed by the council. There seems to be no authority for any such expenditure to be charged to the general rate fund—apart from local legislation or possibly ministerial sanction under s. 228 (1) of the Local Government Act, 1933—and, therefore, in practice, the whole of the expenses will probably have to be met by the chairman of the council out of his allowance paid under s. 116 of the Local Government Act, 1948. In this connexion, the remarks made by Romer, J., in *Att.-Gen.* v. *Cardiff Corporation* [1894] 2 Ch., at p. 342, should be remembered: "the corporation is undoubtedly entitled to make a reasonable addition to the mayor's salary if it be anticipated that in his year of office, by reason of the occurrence of some event of national importance, his expenditure as mayor in festivities and so forth may be increased." J.F.G.

MISCELLANEOUS INFORMATION

THE COUNTY OF DERBY— CHIEF CONSTABLE'S REPORT FOR 1954

This is an elaborately prepared and detailed report containing a great deal of information which cannot be referred to in a brief summary.

In his preface, the chief constable makes various comments of general interest. He notes, for example, that " police reports on serious accidents make distressing reading, *especially when one realizes that so many of them need never have happened.*" After dealing with various matters relating to road accidents he states that the police do not despair but persist in the hope that their propaganda to young people will have a long-term effect. All will agree with his statement that there can be no sympathy for the drunken driver, whatever his position or whatever happens to him. He adds that there is no excuse for this offence. Unfortunately, the figures in the report show that there were 64 such charges in 1954 compared with 37 in 1953. Three of the charges were dismissed, and one defendant was committed for trial. In the remaining 60 cases, summary convictions resulted.

The chief constable comments on the manpower shortage in his force. On December 31, 1954, there were 705 serving officers, and there were 134 vacancies. Housing difficulties do not account for the shortage; a married man can be offered a house within a few months. His view is that the pay is inadequate to compensate for the hours of duty and the necessary conditions of police service. He states that men can earn considerably more in industry and on the land, and in those occupations can normally have all their nights in bed and their week-ends free. The promise of a pension in 25 years' time does not outweigh the present disadvantages of police service. In the chief constable's view, the pay must be made at least equal to that which the right type of man for the police service can earn in industry. Meantime the effect of the manpower shortage is being overcome only by the extra duties uncomplainingly undertaken by serving members, supported by the special constabulary.

We note in this report a point which we have seen in other reports. One hundred and seventy-one male constables in the force have qualified, both in education and police duty, for promotion to sergeant. The total authorized establishment of sergeants is only 98. It seems as though many of the 171 will have to wait a long time before promotion comes their way

The chief constable hopes for an annual entry into the force of approximately 20 former cadets. The cadets do useful work in manning stations and so liberating constables for other duties. Their authorized establishment has been increased to 33.

A good deal of police time had to be given to providing police escorts for 578 of the 1,710 abnormal loads of which notification was received during the year. Such escorts, though the men can ill be spared, are necessary to avoid traffic congestion and to prevent accidents.

The rising cost of everything is reflected in the figure of police expenditure. The actual expenditure in the county in 1951, 52, and 53 was £628,780, £642,791 and £763,098. The probable expenditure for 1954 is given as £814,000.

The number of crimes known to the police in 1954 was 480 fewer than in 1953, and the percentage of detection was 70·2. The force is still hoping to get back to its pre-war rate of 85·1 *per cent.* Juveniles were responsible for 1,063 of the 2,930 detected crimes, 36·3 *per cent.* The same complaint is voiced as has appeared in so many other reports, that the public will not take reasonable care to protect their property from thieves. In particular, it is stated that the simple precaution of removing the ignition key and of locking vehicle doors would do much to discourage the car thief. For non-indictable offences there were, in 1954, 10,199 prosecutions and 2,732 cautions. The 1953 figures were 10,488 and 2,119.

Two hundred and eight sheep, 664 poultry and three cattle were killed or injured by dogs during the year. Much of this loss could probably be prevented if dog-owners took more care.

There is much more information in this report, but we have no space to deal further with it.

CARDIFF PROBATION REPORT

The report of the probation committee for the city of Cardiff for 1954 records a welcome decrease in juvenile delinquency.

Indictable offences show a decrease of 51 (18·3 *per cent.*) on the total for 1953. There were 131 cases of stealing, 31 less than in 1953 when 162 cases were recorded. The number of breaking and entering cases (45) was 15 less than that of the previous year. Non-indictable offences show a decrease of 91 (24 *per cent.*). Of the 75 children conditionally discharged and the 50 absolutely discharged, about 38 *per cent.* were ordered to pay costs, compensation or damages.

There is an interesting survey of the results of probation over a period of many years. The report quotes a statement in a legal journal in 1927 that about 50 *per cent.* real and lasting successes would be as much as could be hoped for under present conditions.

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" If we regard the indictable offences as generally more serious than the non-indictable, the figures suggest that probation appears to be satisfactory with about two-thirds of the juveniles and four-fifths of the adults. The indications are that over a five-year period after being placed on probation, two out of the three probationers make good."

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The reports of inspectors of weights and measures frequently call attention to the need for legislation to bring the law into a more up-to-date condition in various respects. In his annual report, Mr. Leonard E. Kirk, chief inspector to the county borough of East Ham, refers to the inadequacy of maximum penalties. It needs little imagination, he says, to compare the value of the £5 penalty fixed in 1878 with its value today. That is true enough, but it applies to a great

number of maximum penalties fixed long ago and perhaps the question of revising such penalties might be considered generally.

The inconvenience, apart from the question of money's worth, arising through receiving short measure is illustrated by the following example. In 59 rolls of curtaining material measured, 33 rolls were short of the advertised width. One piece displayed as 48 *in.* wide was, in fact, only 45 *in.* wide. Others were up to 2 *in.* short in width. This means that, apart from the fact that the value of the material sold is less, the purchaser is considerably out in the measurements and calculations when making up the curtains.

Mr. Kirk has given much consideration to the question of short weight in coal, and he says the main conclusion he has drawn is that most of the trouble springs from the outdated methods used in the coal yards themselves, where coal is weighed in the open, despite weather conditions. He continues: " The facilities supplied to the ' weigher,' too, are totally inadequate, for whether it is wet, icy cold, or windy, no protection whatever is provided for the weighers and their machines. Numb fingers, and the dusty nature of the job under these conditions, tend to breed a lack of interest in a job where accuracy in weight is essential—hence the deficiencies!

" More often than not there are no arrangements for a weigher to wash, etc. and so get rid of his coal dust and grime, and this makes it difficult for him to present himself at an ordinary café for a meal. Bearing in mind the excellent facilities provided at most modern coal mines to enable the miner to ' come clean,' the coal-yard weigher might do a better job if similar facilities were given to him, and I submit that—in order to eliminate this factor—the cause of coal prosecutions, a modernization of most existing local yards is essential."

PEWSEY R.D.C. YEAR BOOK AND ACCOUNTS

Mr. E. H. M. Sargent and Mr. I. W. Janes, respectively clerk and chief financial officer, have combined to produce this well designed and informative publication. The Year Book contains some interesting information not often found in similar annual volumes, for example, a list of members and records of their attendances at meetings, details of staff, and addresses of public offices of various kinds; all matters of use and interest to the members of the council. The remainder of the volume summarizes the financial transactions of 1954/55.

During the year 63 new dwellings were completed of which 14 were erected by direct labour. The direct labour force also carried out a number of conversions of old houses into flats and installed modern amenities in certain other old houses. The council owned at March 31, last, 880 houses, and so managed their housing provision that rate contributions were limited to the statutory minimum; nevertheless, the tenants were subsidized from public funds to the extent of £19,500. Mr. Janes points out that increased Public Works Loan Board interest rates and reduced housing subsidies will shortly necessitate a review of rents, and since Mr. Janes wrote his comment the Minister of Housing and Local Government has made it clear that active consideration is being given to further measures designed to limit subsidization of tenants who can afford to pay economic rents.

The council has devoted a considerable amount of attention to housing improvement grants and Mr. Sargent states that schemes have been approved, many of which have been completed, which will result in some 150 old houses being completely modernized with the aid of these grants.

The water undertaking continues to expand and improve its service, and further major works are envisaged: the rate borne deficiency for 1954/55 was £1,700, about equal to a 3¼*d.* rate.

The general financial position of the authority is eminently satisfactory, the rate fund credit balance totalling £32,000; the corresponding cash has been used largely to finance house building and thus delay expensive P.W.L.B. borrowing as long as possible. A penny rate produces £474 and a rate of 19*s.* 6*d.* was levied in the year under review, 81 *per cent.* of which went to the Wiltshire county council. Since 1930/31 it is interesting to note that the penny rate product has not quite doubled whereas loan debt has risen from £129,000 to £1,024,000.

SWANSEA WEIGHTS AND MEASURES REPORT

In his report for the year ending March 31, Mr. F. W. Brown, chief inspector for the county borough of Swansea, states that in general, weighing and measuring apparatus in use for trade was found to be well maintained. He goes on: " The general standard of weighing of pre-packed foods was again very high, the main discrepancies occurring in articles weighed at the time of sale. The misreading of self-indicating scales through not standing directly in front of the chart, or failing to wait for the indicator to come to rest, are common causes of this type of error. Food packed in novel " handy packs " is increasingly being offered to the public. These novel packs are convenient to use and attractively presented, but as a rule have a smaller weight or measure for price value, than those sold in the traditional units of weight or measure." Similarly, fertilizers in tablet form generally turn out to be more expensive than those sold by weight or measure. However, many users of small quantities may be quite willing to pay extra if they find the tablets more convenient to use.

The vigilance of inspectors led to the discovery of a fraud in connexion with the delivery of material for road making. The persons concerned were brought to justice and, says the report, the contractors were undoubtedly saved from paying for very many tons of road materials with which they were never supplied.

In common with other reports, this one refers to the need for new legislation about shops. Mr. Brown writes " Rationalization of the many confusing and conflicting local orders in Swansea is now long overdue. This can only be achieved through the simplification of procedure which it is hoped the new shops' legislation will provide."

The number of inspectors who deal with fishing nets must be limited. The following interesting paragraph appears in the Swansea report: " Six fishing net gauges were verified and stamped with a local stamp for the South Wales Sea Fisheries District Committee. These gauges which are used for enforcing the committee's byelaws controlling the fishing for oysters, mackerel, mussels, and cockles, were certified to a tolerance of plus or minus one hundredth of an inch."

ROAD CASUALTIES—JULY AND AUGUST

Road casualties both in July and August numbered over 27,000. The provisional total for August is 27,191, or 3,426 more than in August, 1954. Deaths numbered 497, an increase of 89; serious injuries 6,219, an increase of 532, and slight injuries 20,475, an increase of 2,805.

The final total for July was 27,308. This was 3,861 more than in July, 1954. Deaths numbered 457, serious injuries 6,195, and slight injuries 20,656.

The greatest increase in July, compared with the same month last year, was in casualties to motor cyclists and pedal cyclists. The figures were:

	Died	*Injured*	*Total*	*Increase*
Motor cyclists	140	7,467	7,607	2,084
Motor-assisted pedal cyclists	8	351	359	64
Pedal cyclists	53	6,094	6,147	1,132

Pedestrian casualties increased by 298 to 5,502, of which 161 were fatal; and casualties to occupants of motor vehicles (other than motor cycles) by 277 to 7,686, including 95 deaths.

Police reports show that 60 persons died in July as a result of road accidents between 10 and 11 *p.m.* This was about twice as many as during any other hour of the day.

SERVICES FOR THE DISABLED

The development of the provision made for the disabled by statutory bodies and voluntary organizations is described very clearly, together with an account of the present position, in a book published by H.M. Stationery Office for the Ministry of Labour and National Service entitled "Services for the Disabled." Great progress has been made since the King's National Roll scheme was introduced in 1919 to encourage employers to employ a quota of disabled servicemen. Latterly, there has been the effect of the National Health Service on rehabilitation in which there is a wide scope for treatment in both physical illness and in mental illness. It is explained in the book that many patients gain much benefit from a well-planned programme of occupation, recreation and physical training to fit them for a return to active life in the community. An account is given of the part which physiotherapy and occupational therapy play in promoting physical and mental well-being in various types of patients. Local authorities are beginning to make use of their powers under s. 29 of the National Assistance Act, 1948, to make any necessary structural adaptations in the homes of disabled persons and particularly of the housewife who can be helped in this way to do her household work, and enabled to be independent. As shown in the book, facilities for the rehabilitation of children and young persons are also available either with adults, in the case of those over 12 years, or in separate children's hospitals or children's units in general hospitals.

Training schemes

Perhaps, however, the chapter on the employment services will be of the greatest general interest as it shows not only by description but also by illustrations the various kinds of rehabilitation and training which are available and describes also the help given by the disablement re-settlement officers of the Ministry of Labour and National Service. Some disabled persons who are unfit for ordinary employment are provided with sheltered employment by voluntary organizations or local authorities. For some, assistance is given under home workers' schemes arranged by Remploy, Limited, local authorities or voluntary organizations. Any person over the age of 16 who has suffered illness

or injury and is in need of a course of industrial rehabilitation in order to settle in work again may apply for admission to an industrial rehabilitation unit, 15 of which have been set up by the Ministry in different parts of the country. Maintenance allowances are paid to those attending these courses. It is not generally realized that arrangements also exist for the provision of facilities for the training of disabled persons with the ability and educational qualifications for a professional or comparable calling. The assistance given, subject to necessity, is in the form of a financial grant covering tuition and examination fees, the cost of textbooks, and a maintenance allowance, which varies with domestic circumstances, if the training is full-time. The grants are available for study or training for generally recognized qualifications for most professions, such as accountancy, auctioneering, estate agency and surveying and law and teaching. Grants have been made for courses for university degrees where these were themselves the normal method of qualification for a profession.

Training schemes for the blind have long been established but in recent years it has been realized that the deaf also create special problems. It is shown, however, that there are some forms of employment which can be very satisfactorily undertaken by the deaf. One major difficulty is an initial reluctance on the part of employers to engage them but it is clear that deafness, although a handicap, need be no bar to employment. Hearing aids together with advice and training in lip-reading are very valuable. Membership of a club for the hard of hearing is also helpful as providing the opportunity of mutual discussion of difficulties.

Mental defectives

In describing the various social services which are available it is mentioned that many persons classified as defectives are able to live in the community without being dealt with under the Mental Deficiency Acts and many are able to earn their own living. Of some 60,000 defectives on the books of mental deficiency hospitals about 5,000 are living in the community on licence. Another 76,000 are under voluntary or statutory supervision or guardianship. Many patients, although still resident in mental deficiency institutions, go out daily to paid employment as domestic workers or as factory or farm workers. In several areas there are hostels ancillary to the parent hospital but often remote from it. In these, patients are usually on licence to the hostel warden and work on farms and in factories. They pay for their board and lodging, purchase private clothing and provide their own holidays.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 81.

ALL ABOUT WILD BIRDS' EGGS

Some of the provisions of the Protection of Birds Act, 1954, were castigated by the chairman of the Wirral justices sitting at Bromborough recently, when a man described as a professional naturalist, and who claimed to be the largest dealer in wild birds' eggs in the world, appeared to answer seven charges under the Act.

The first two charges alleged that he had in his possession for sale certain eggs of wild birds of species that have nested in the British Isles in a wild state, contrary to s. 6 (1) (*b*) of the Act. The particulars of the charges included 20 treecreepers', 75 marsh warblers', 21 pied flycatchers', 60 black winged stilts', five greenshanks' and two montagu's harriers'.

The third, fourth and fifth charges alleged the sale to named persons of the eggs of similar birds contrary to the same section. Particulars included the eggs of tree sparrows, red backed shrikes, dunlins and little grebes.

The last two charges alleged that defendant had offered eggs of similar birds for sale including the continental song thrush, continental robin and continental goldfinch, etc.

The first two charges were based on lists seized on the premises and these were described by the defendant as current stock lists. The prosecution submitted that as the eggs were listed in current stock lists the defendant had them in his possession for sale. The defendant maintained that he was reorganizing his collection and was in the process of amending his stock lists, and that eggs surplus to the requirements of his own collection would be donated to museums or given away elsewhere. The justices found there was insufficient evidence on which they could convict and dismissed the summonses.

The third charge was supported by evidence of an *agent provocateur*. A woman visited the defendant's premises with the apparent object of purchasing an egg cabinet for her son. The defendant advised her against purchasing anything he had as being unsuitable for her son's requirements and instead sold her an egg-blowing outfit. She asked for some eggs of British wild birds and the defendant told her he had none for sale. He did, however, ask for and was paid 37*s*. 6*d*. for an egg-blowing outfit priced at 27*s*. 6*d*., and he did supply her with some eggs of British wild birds and the egg of a vulture. The defendant's explanation was that he had charged 10*s*. for the vulture's egg and given the British wild birds' eggs as a present for the boy. His explanation was not accepted and he was convicted of that offence and fined £5.

The fourth and fifth charges, which were of a similar nature, were withdrawn by the prosecution, and Mr. G. E. Taylor, clerk to the Wirral justices, to whom the writer is greatly indebted for this report, states that the main argument centred round the last two summonses, which it will be recalled related to the offer for sale of "the eggs of wild birds *of species* that have nested in the British Isles in a wild state." Particulars of the eggs in question were set out in the summonses. The point at issue was whether the birds mentioned in the summonses were species of birds or merely sub-species.

Two expert witnesses were called for the prosecution who gave cogent reasons for their opinion that the birds in question were merely sub-species. The main reason being that the so-called continental birds were indistinguishable in the field from their British counterparts. The defendant and an expert naturalist gave reasons for their contention that the continental varieties were species and not sub-species. The defence laid emphasis on the fact that in certain sections of the Act and in the schedules thereto in many instances the words "all species" appeared after the name of the bird and from that it was submitted that each variety of a particular bird was a separate species and what the prosecution described as sub-species were in fact species for the purposes of the Act, and there being no evidence that the continental varieties had ever nested in the British Isles the defendant was not guilty of the offence alleged.

The defendant in his evidence mentioned that he had corresponded with Lady Tweedsmuir and Major Tufton Beamish during the passage of the Bill through the Commons and that their replies had confirmed his opinion on this point. (It will be recalled that these members were introducer and seconder respectively of the Bill.) Defendant stated that he had promised part of the stilts' eggs collection to the Liverpool Museum and part to the London Museum, in both cases free of charge.

The court convicted upon the last two charges and imposed fines of £25 upon each charge and ordered payment of 50 guineas costs. The chairman commented that the Act was one with "very woolly thinking and even worse drafting." "I think," he said, "the schedule is bad."

COMMENT

It will be recalled that in a previous case reported in this series a few months ago attention was drawn to weaknesses in s. 8 of the Act, which is designed to prevent birds being confined in cages of inadequate size. It would appear from a perusal of the schedule and of s. 6 under which the charges in this case were brought, that the criticism of the chairman was not unmerited. If defendant's contention that the Act did not apply to any foreign birds and that no offence was committed if he offered the eggs of continental species for sale, was conceded, a large rent would be torn in the protective cover thrown by the Act over wild birds.

Power for a justice to grant a search warrant where he is reasonably satisfied by information on oath that an offence under s. 6 has been committed, is given by subs. (2) of the section.

It will be recalled that a curious feature of the Act is that offenders may, in certain circumstances, subject themselves to what is described as "a special penalty." Offences which do not attract the "special penalty" are punishable with a maximum fine of £5, whereas an offender liable to a special penalty may be imprisoned for one month and fined £25 in the case of a first offence and for three months and fined £25 in the case of a second or subsequent offence. R.L.H.

No. 82.

AN ACT OF FOLLY

A 35 year old worker in an explosives factory was charged at Birmingham magistrates' court recently with contravening one of the special rules made under s. 11 of the Explosives Act, 1875, and sanctioned by the Secretary of State on March 10, 1952, in that he had brought matches and cigarettes into a dangerous area in a factory, namely, a cordite hopper on a loading field, contrary to ss. 11 and 91 of the Explosives Act, 1875. Defendant was also charged with contravening another of the special rules by smoking in the hopper, contrary to the same sections of the Act.

For the prosecution, it was stated that defendant was employed as an attendant in a cordite hopper which was situated in the explosive danger area of a large local factory. Inside the hopper, which was a metal cabinet, there were rolls of cordite and these were fed to another room through a small hole in the wall, where female workers were filling cartridges.

On August 30, last, two inspectors of the works police, together with the foreman, went into defendant's hopper and found a packet of cigarettes and a box of matches on a ledge there. When challenged about it defendant admitted the cigarettes and matches were his and that he had been smoking in the hopper. He said: "The job has been getting me down and I had a smoke to break the monotony." Later he made a statement saying that he had taken the cigarettes and matches in the danger area on August 23, last, and after having a smoke he had put them on a ledge in the hopper; that he had asked for a transfer because he wanted to get out of it; that he realized he was taking a risk in taking these things into the danger area and a bigger one in smoking inside the hopper. It was stated for the prosecution that the hopper was impregnated with cordite and if it had caught fire the consequences might have been serious as defendant would not only have lost his own life, but would have seriously jeopardized the lives of fellow workers. There were 750 workers employed in the danger area and it was impossible to check everyone each time they entered the works. Each man working in the danger area had a copy of the Home Office Rules and defendant had signed for his copy. In addition, the rules were read over periodically to the section.

In sentencing the defendant to one month's imprisonment on each charge (concurrent), the chairman said: "This is a very serious case and it is something you went into with your eyes open. You were warned and knew the consequences. It was a serious disregard for the others working on the site."

COMMENT

Section 11 of the Act of 1875 empowers the occupiers of gunpowder factories or magazines, with the sanction of the Secretary of State, to make special rules for the regulation of the persons managing or employed in or about such factory or magazine. The section contains power for the Secretary of State to make, repeal, alter or add to any rules under this section and for the occupier, if aggrieved by the action of the Secretary of State, to require the matter to be referred to arbitration.

By s. 91, offenders may be punished, if dealt with summarily, by one month's imprisonment or a fine of £100. The court has also power to prohibit by order a person from doing any act for doing which he has been twice convicted under the Act, and a person who disobeys such summary order may be imprisoned for six months.

(The writer is greatly indebted to Mr. T. M. Elias, clerk to the Birmingham justices, for information in regard to this case.)

R.L.H.

No. 83.

AN UNUSUAL CONVICTION

A flying instructor was the defendant at Beaconsfield magistrates' court recently when he appeared to answer a charge that he had aided and abetted one AB in the commission of an offence, namely, that he the said AB, being a person under the age of 17 years, had sole control of an aircraft in motion, contrary to the provisions of the Air Navigation Order.

For the prosecution it was stated that at Denham airfield, earlier in the year, the defendant instructed AB to get into an Auster aircraft and taxi it. AB complied and the Auster was in collision with a Tiger Moth which had landed and taken off almost immediately.

Defendant told the court that AB looked older than he was and that it had never occurred to him to check his age. AB had shown himself perfectly capable of handling an aircraft on the ground.

Defendant was fined £20 and ordered to pay £5 5*s*. costs.

COMMENT

Mr. P. Nickson, clerk to the Burnham justices, to whom the writer is greatly indebted for this report, mentions that the pilot of the other aircraft concerned in the collision was prosecuted for operating an aircraft in a negligent manner by taking off and landing when it was not safe to do so, but the charge was dismissed.

It is worth knowing that by the regulations a person found guilty of the offence of which the flying instructor was convicted, may be sentenced to six months' imprisonment or a fine of £200, and it therefore behoves those concerned with flying clubs to ascertain the age of youngsters who frequent such clubs. R.L.H.

PENALTIES

North Walsham—September, 1955. Unlawfully trampling down certain marram grass growing on the sandhills at Sea Palling. Fined £5. Defendant was summoned under the byelaws of the East Suffolk and Norfolk River Board. The sandhills form the natural defence against the sea on this part of the coast. The chairman announced that future offenders would be fined the maximum penalty of £20.

Cardiff—September, 1955. Conveying letters to a prisoner (two charges). Taking tobacco to a prisoner (four charges). Taking razor blades to a prisoner (one charge). Three months' imprisonment (concurrent) on each of the summonses concerning tobacco, the other charges being taken into account. Defendant, a 30 year old prison officer.

Stockport—September, 1955. Using a motor car to carry electors or their proxies to or from the poll on general election day. Fined £5.

Preston—September, 1955. Assault occasioning actual bodily harm—three defendants. One, 18 years old, fined £20. Another, 19 years old, fined £20, and the third, 18 years old, fined £30. Defendants, dressed as "teddy boys," felled a police officer on holiday and another man, with blows to the head. Both were found lying unconscious on the ground and the policeman was kicked in the face as he lay on the ground and his lower lip was pulped.

NOTICES

A lecture on "Causation in the Law" by Professor H. L. A. Hart, M.A., Professor of Jurisprudence in the University of Oxford and Fellow of University College, Oxford, will be given at King's College, Strand, W.C.2, on Monday, October 24, 1955, at 5 *p.m.* The chair will be taken by Professor R. H. Graveson, LL.D., S.J.D., Professor of Law in the University of London. Admission is free, without ticket.

A lecture on "Comparative Ancient Law" by A. S. Diamond, Barrister-at-Law, M.A., LL.D., Master of the Supreme Court, Queen's Bench Division, will be given at University College (Eugenics Theatre), Gower Street, W.C.1, on Monday, November 21, 1955, at 5 *p.m.* The chair will be taken by Professor R. Powell, D.C.L., Professor of Roman Law in the University of London. Admission is free, without ticket.

REVIEWS

The Man on Your Conscience. By Michael Eddowes. London: Cassell & Co., 37/38 St. Andrew's Hill, London. Price 12s. 6d. net.

In 1949, Timothy John Evans was arrested and charged with the murder of his wife Beryl and his baby daughter Geraldine. He was tried at the Central Criminal Court for the murder of the baby, and was convicted. The evidence pointed to the murder of both mother and child by the same hand, and it was assumed that Evans had murdered both. He was hanged, and the case excited little notice at the time.

In 1953, one John Reginald Halliday Christie was arrested and charged with the murder of his wife. Christie turned out to be a strangler of women and sexually depraved. Now the Evans family had lived in the house where the Christies lived, and when it was brought to light that Christie had murdered several women and disposed of their bodies in the same manner and in almost the same place as Evans was supposed to have done, people began to remember that at his trial Evans had gone back on a confession he had made to the police and in his evidence had accused Christie of being the murderer of Beryl and Geraldine. Was it possible, it was asked, that two stranglers with the same methods, were living at the same house at the same time, or was not Christie after all the murderer in the case for which Evans had suffered the death penalty ? The press took up the matter and public opinion became uneasy, especially when the whole story of Christie's crimes, as far as they were discovered, became known. He had admitted half a dozen or more murders, and there was a growing belief that he, and not Evans, had killed Beryl and Geraldine. This was intensified when it became known that Christie had confessed to killing Beryl, though he always denied the murder of the baby. Christie was convicted of the murder of his wife, and was duly executed. Meantime, Mr. Scott Henderson, Q.C., had been appointed to inquire into the case of Evans in the light of the Christie case, and his report was that in his opinion there had been no miscarriage of justice.

Mr. Eddowes has set out to prove that the conviction of Evans was a terrible mistake, and that Christie was the murderer of Beryl and Geraldine. He has subjected all the evidence, the confessions and the documents, including the report of Mr. Scott Henderson, to the closest examination, and has made his own investigations. His arguments are put forward with care and moderation, and they are all the more telling for that reason. The probabilities certainly point to Christie as the culprit and as the man who first " framed " Evans and then gave evidence against him. Christie was older, more experienced and more intelligent than Evans, who was illiterate, weak and rather stupid. Christie had at one time a number of convictions. Evans had none. Christie was abnormal sexually and a self-confessed strangler. Why, then, did Evans at one stage confess and then recant and accuse Christie ? Mr. Eddowes offers a reasonable explanation, and it is well known that such false confessions are sometimes made by unintelligent or unbalanced persons. Why did Christie continue to deny the murder of the baby if in fact he killed her as well as her mother ? That is one of the puzzling features of this bewildering story. Mr. Eddowes makes out a strong case for the innocence of Evans, but each reader must judge for himself. Many a reader will lay down the book with an uneasy feeling that there may have been a miscarriage of justice, and some will add that if there had not been a death penalty prescribed by law, the wrong, if it was a wrong, could in part at all events have been righted.

Beattie's Elements of Estate Duty Supplement. By C. N. Beattie. London : Butterworth & Co. (Publishers) Ltd. London. 1955. Price 3s. 6d. net.

This supplement runs to 16 pages only, but is exceptionally important. Since the appearance of the main work (which we reviewed at the time) there have been important decisions upon the law of estate duty, as affecting insurance policies and marriage settlements, and also gifts *inter vivos* designed to avoid the " five years " rule. In particular, the discovery that in some cases a gift may hold good, notwithstanding the death of the giver within five years, if it consists of property which changes its fundamental character (such as stock on the verge of redemption), has opened up wide possibilities for the family solicitor. It is obviously uncertain how long the Inland Revenue will refrain from asking Parliament to alter the position; meantime our readers in private practice will do well to familiarize themselves with the decisions of the last three years, to be found in this supplement. The supplement is on the usual lines, of a noter-up to the main volume page by page, and collects all relevant decisions and provisions of the Finance Acts since the main work was published.

The main work and the supplement are available at the combined price of 25*s.* net, which is moderate in view of the importance of the subject matter to solicitors and clients.

PERSONALIA

APPOINTMENTS

Mr. Charles M. W. S. Freeman, deputy town clerk of Battersea, has been recommended for appointment as town clerk in succession to Mr. R. G. Berry, who, as announced in our issue of July 23, last, retires on October 31.

Mr. J. F. W. Sims, M.A., at present a senior assistant solicitor for Hove, Sussex, borough council, has been appointed as town clerk of Tanga, Tanganyika. Mr. Sims expects to take up his new appointment in East Africa during the first week in January, 1956. Before his appointment at Hove he was assistant solicitor at Colchester, Essex, from 1950 to 1954. He served his articles with Mr. D. Murray John, O.B.E., B.A., town clerk of Swindon, Wilts.

Mr. M. Burgess, who has held the position of temporary assistant solicitor with the borough of Wimbledon, S.W.19, for the past four years, has now been appointed assistant solicitor with Epsom and Ewell, Surrey, borough council.

Mr. C. D. L. Aylwin has been appointed a full-time probation officer in Bristol to fill the vacancy caused by the resignation of Mr. S. G. Ford, who is now a probation officer in Wiltshire. Mr. Aylwin has completed a training course under the Home Office Training and Advisory Board.

OBITUARY

We record with regret the death at the age of 69 of Sir Hugh Holmes, K.B.E., C.M.G., M.C., who had a distinguished judicial and a gallant military career. Sir Hugh was the second son of the Rt. Hon. Hugh Holmes, formerly a Lord Justice of Appeal in Ireland. He was educated at Charterhouse and Trinity College, Dublin, and was called to the Irish bar in 1910.

He served throughout World War I with the Royal Field Artillery taking part in the Gallipoli operations and also seeing fighting in France. Wounded in the Somme in 1916 he won the M.C. at Ypres in 1917 and a Bar to that decoration in the following year.

After the war came to an end Holmes joined the Department of the Attorney-General in Ireland and remained there until 1920, when he took silk.

Then he went to Egypt as a Judge of the Native Court in Cairo and some four years later went as Judge to the Mixed Court.

He became Procurator-General of the Mixed Court of Appeal in Alexandria in 1929 and continued there until 1949 when the Courts were closed following the Montreux Convention whereby all foreigners came under the exclusive jurisdiction of the Egyptian national Courts. He subsequently appeared successfully on behalf of the Egyptian Government in two important cases involving large sums of money —the Turkish tribute loan case and the Suez Canal case.

At the age of 67 Sir Hugh came out of retirement to act as a Judge of the Supreme Court of Kenya during the Mau Mau Emergency when that Court was exposed to severe pressure of work. The late Judge married in 1912 Rose, daughter of Mr. Thomas Falls, of Lislap, Co. Tyrone, and there are four daughters and one son of the marriage.

BOOKS AND PAPERS RECEIVED

Helping Families. A Memorandum Prepared by the Association of Children's Officers as a Contribution to the Current Discussion on Help for the Socially Inadequate Family. September, 1955. Price 4*d.* Copies can be obtained price 6*d.* post free, from Mr. A. S. N. Allison, 47 Full Street, Derby.

Defense des Libertés Democratiques. Interventions et documents de la Conference Internationale des Jurists pour la Defense des Libertés Democratiques (Vienne, 1954). L'Association Internationale des Juristes Democrates, 234, rue du Trône, Bruxelles.

Institute of Social Welfare. A Professional Association of Officers Engaged in the Welfare Services of Local Authorities in Great Britain and Northern Ireland. Quarterly Bulletin. Secretary: Mr. F. D. Glover, F.I.S.W., " Willaston," Ridgemount Avenue, Bassett, Southampton.

He was very very shaken
When the point he hadn't taken
Was the one His Lordship neatly
Found disposed of it completely.

J.P.C.

TAKEN AND CARRIED AWAY

You cannot get a quart into a pint-pot. That is the dilemma facing our resourceful and hard-worked police as they strive to cope with the ever-expanding masses of vehicles that pour, every hour, from the outskirts into the centre of London and other great cities. Automatic signals, one-way streets, roundabouts and additional car-parks are but palliatives; nobody, even if he were blessed with the powers of an archangel and the patience of a saint, could keep the traffic moving through an antiquated street-network, designed for totally different conditions. Brooding over the millions that scurry to and fro—

> " Chaos umpire sits,
> And by decision more embroils the fray
> By which he reigns."

In this gigantic free-for-all, the urge to travel under your own steam continues to defeat its own objectives. Official exhortations to avoid the rush-hour can scarcely influence workers who are tied down to fixed working times; and appeals to " leave your car at home " are apt to fall unresponsively on the ears of motorists who have fought there way once or twice into omnibus or Tube. Still refusing to be baffled by the problem, the authorities are now engaged in extending the " no waiting " regulations to some of the worst points of congestion, but it will appear to many that the spirit of compromise is unlikely to provide a solution. Short of pulling down and rebuilding the central areas, the only effective remedy would seem to be the banning of all but public service vehicles from those areas on week-days during working-hours—a drastic measure which, running counter to the British spirit of " live and let live," is likely to be rejected out of hand.

Across the Channel our Gallic neighbours are facing a similar problem with single-minded logic. In the eighth *arrondissement* of Paris, which takes in the busy district of the Champs Elysées and the Faubourg St. Honoré, new regulations have been promulgated, directed against that most fertile source of congestion —inconsiderate parking. The thoughtless motorist who has left his car at a corner or on the wrong side of a narrow street, blocking a bus-stop, a garage-entrance or the entry to a courtyard, will return no longer to find a traffic-block of his own making, attended by an indignant *Agent* and a gesticulating crowd; he will simply discover that his car has disappeared. For the Prefecture of Police have acquired a dozen powerful breakdown-vans which have orders to tow away offending vehicles, without regard to clutch or brakes, to the nearest *Mairie* or, if there is no room there, to a municipal pound. " No provision " says *The Times* " is known to have been made for notifying the owner, whose loss of time in searching for his car is envisaged by the authorities as an additional penalty or deterrent." The new system, after a preliminary try-out in the central quarter, is expected to be extended to the whole of Paris.

Direct action of this kind, while it will certainly exacerbate the tempers of a minority, is calculated to confer immense benefits on the community as a whole. It was Voltaire who, in a thinly-veiled reference to the court-martial and execution of the ill-fated Admiral Byng, observed that the victim's fellow-countrymen thought it well to kill an admiral from time to time, *pour encourager les autres*. The spectacle of distracted motorists, footing it wearily through the streets of Paris from end to end, seeking their missing vehicles in a maze of narrow streets and *culs-de-sac*, is likely to provide encouragement of the right kind to other car-owners. Short of chaining their vehicles to a convenient lamp-post or tree, there seems to be little they can do by way of *riposte*; and so long as the existing congestion is not aggravated by the manoeuvres of the towing-vehicles and their loads, swift and effective improvement can be foreseen.

The impounding of the vehicles themselves, as an additional deterrent to the offending owners, is a masterly touch. There was one famous occasion when a similar method was employed in England, and the more drastically since the penalty was imposed *in personam* as well as *in rem*. Those who know their Dickens will remember the shooting party comprising Mr. Wardle, Mr. Trundle and three Pickwickians, with the ubiquitous Sam Weller in attendance. Mr. Pickwick himself, having been laid up with a touch of rheumatism, found it difficult to keep up with the rest of the party, and the ingenious expedient was adopted of transporting him to the picnicking place in a wheelbarrow. Having partaken of an excellent meal and a considerable quantity of cold punch, the great man became comatose; and it was decided to leave him to sleep it off while the rest of the party proceeded with their sport a short distance away. All would have been well but for the unfortunate coincidence that Captain Boldwig, the irascible owner of the land on which this innocent trespass occurred, chose to make a tour of inspection past the very spot where Mr. Pickwick, still in the wheelbarrow, was peacefully slumbering. Peremptory orders to declare who he was and what he was doing there elicited from Mr. Pickwick nothing but a drowsy murmur, in which the words " cold punch " could, with difficulty, be distinguished.

> " What did he say his name was? " asked the Captain.
> " Punch, I think, Sir," replied the gamekeeper, Wilkins.
> " That's his impudence—that's his confounded impudence," said Captain Boldwig, in a high passion. " Wheel him away, Wilkins, wheel him away directly ! " " Where shall I wheel him to, Sir? " inquired Wilkins, with great timidity.
> " Wheel him to the Devil ! " replied the Captain. " Very well, Sir," said Wilkins.
> " Stay ! " said the Captain; " Wheel him to the pound, and let us see whether he calls himself Punch when he comes to himself. He shall not bully me ! "

Thus it came to pass that the great man, " to the immeasurable delight and satisfaction, not only of all the boys in the village, but three-fourths of the whole population," awoke at last, still in the wheelbarrow, in that small enclosed space, to be pelted with a turnip, a potato, an egg " and a few other little tokens of the playful disposition of the many-headed." Prompt rescue by his friends saved him from worse indignities.

It is a cruel scene, and suggests all kinds of disquieting possibilities. If the new methods should one day find their way from the Paris Prefecture to Scotland Yard and the county police headquarters, any commissioner or chief constable who combines a fiendish ingenuity with a perverted sense of humour will be able to devise some exemplary penalties for motorists found " drunk in charge."

A.L.P.

> In the days beyond recalling
> In a county court in Kent
> That was when I heard you stutter—
> " Yes, your Honour, I consent."
>
> I was also doing my first one
> Surely you remember me ?
> I'm the chap who was against you
> And who murmured " I agree."

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Causing bodily harm—Malicious damage to property—Extinguishing lights in dance hall.*

What offences, if any, have been committed by a person who in a public dance hall during a dance obtains access to the switch room of the hall and turns out all the lights?

1. What would be the position if:

(*a*) people were injured either as a result of a panic or through an accidental fall on stairs?

(*b*) no panic ensued but property (*e.g.*, drinking glasses) was inadvertently damaged in the darkness?

(*c*) there was neither injury to person nor property.

2. When considering whether a breach of the peace is likely to result from the act of switching off the lights, may the fact that the darkness will assist the commission of assaults, larcenies, etc., in a crowded dance hall be taken into account? TEWIG.

Answer.

1. (*a*) The point here is whether the evidence justifies the inference that the defendant intended to cause a panic or accident knowing that the natural and probable result would be that people would be injured. If it does, the case comes within the principle of *R.* v. *Martin* (1881) 46 J.P. 228, and a charge of causing bodily harm would lie.

(*b*) Again, the question is whether the evidence justifies the inference that the defendant knew that the natural and probable result of his action would be that things would be broken and that he was reckless about this. If it does, malice can be imputed to him, and he can be charged with malicious damage, *cf. R.* v. *Pembleton* (1874) 38 J.P. 454.

(*c*) It does not appear that any criminal offence could be made out.

2. Yes. In both (1) (*a*) and (*b*) it is impossible to express a definite opinion without knowing exactly what is the evidence.

2.—Burial Acts—*Adoption for part of rural parish.*

A civil parish in this district includes three ecclesiastical parishes in which there are separate churches with their own graveyards. One parochial church council did, some time ago, purchase additional land as a burial ground but this is now fully used. The parochial church council is unwilling to face the expense of a further extension and has asked the parish council for assistance. The ecclesiastical parish concerned forms a ward of the civil parish. I shall be glad of your advice as to whether the Burial Acts may be adopted for this ward only and a special rate levied accordingly, in view of the fact that the other two ecclesiastical parishes have adequate churchyards. The authorities on the point seem to be confused.

BURY.

Answer.

Yes; the Burial Acts will be adopted for the ward by a parish meeting for that part of the parish: *see* ss. 7 (4) of the Local Government Act, 1894, and 78 of the Local Government Act, 1933.

3.—Housing Act, 1936, s. 11—*Undertaking by owner—Exception of current tenancy.*

A local authority accepts an undertaking from an owner that, when vacated by the present tenant, a house shall not again be used for human habitation until the authority, on being satisfied that it has been rendered fit for that purpose, cancel the undertaking.

(*a*) Is the acceptance of an undertaking in such terms *ultra vires* the authority?

(*b*) Would an undertaking in such terms enable the owner to obtain possession under s. 156 (1) (*d*) of the Housing Act, 1936?

P. NARDIC.

Answer.

(*a*) Yes, in our opinion. If the authority are satisfied within s. 11 (1) of the Housing Act, 1936, they must act under subs. (2) or (3). The undertaking quoted is not an undertaking within subs. (3), because it contemplates the continued use of the house for habitation while still unfit.

(*b*) This does not arise.

4.—Husband and Wife—*Desertion—Neglect to maintain—Wife residing in Scotland—Jurisdiction of English court.*

I shall be glad if you will be good enough to let me have your opinion upon the following practical point:

A woman resident in Scotland is seeking a maintenance order on the ground of her husband's desertion and neglect to maintain. The circumstances are that the matrimonial home was in Scotland, and the husband, having left his wife, is now resident in England. Under s. 6 of the Maintenance Orders Act, 1950, the wife would appear to have a remedy in Scotland, but the question arises as to whether she is at liberty to bring her application for an order in England, *i.e.*, the court having jurisdiction in the place in which the husband now resides.

Section 1 (1) of the Act gives a court in England jurisdiction in proceedings under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, against a man residing in Scotland or Northern Ireland, if the applicant in the proceedings resides in England and the parties last ordinarily resided together as man and wife in England.

Section 1 (2) (*a*) declares that a court in England has jurisdiction in proceedings under s. 4 by a woman residing in Scotland or Northern Ireland against a man residing in England.

The solicitor for the wife contends that s. 1 (2) (*a*) gives my justices jurisdiction, but my view is that the two subsections must be read together, and in this event the jurisdiction of the justices is ousted, since the parties did not last ordinarily reside together as man and wife in England. Section 1 (2) (*a*) is, in my opinion, merely declaratory, and confers no new jurisdiction.

S. LEX SCRIPTA.

Answer.

In our opinion, s. 1 (2), together with s. 6 of the Married Women (Maintenance) Act, 1949, makes it clear that the English magistrates' court has jurisdiction in these circumstances. Subsections (1) and (2) of s. 1 of the Maintenance Orders Act, 1950, deal with distinct and separate matters, and we see no reason for reading any part of subs. (1) into subs. (2). There is, as stated, jurisdiction also in a Scottish court, but the wife has the right to come to the English court if she so chooses.

5.—Land—*Restrictive covenants—Enfranchised copyholds.*

We are concerned for the purchaser of land required for residential development and it appears from the contract delivered by the vendor's solicitors that the land was formerly copyhold and an admittance dated April, 1841, contained a proviso that "the grant hereby made shall be absolutely null and void in case any building of any kind whatever shall at any time hereafter be erected or built on the land hereby granted or any part thereof." It appears that this restriction has been referred to in the subsequent deeds, as the vendor seeks to sell the land subject thereto so far as the same may still be subsisting. We think for all practical purposes the restriction can now be ignored for we do not think there would be anyone now living who would be able to enforce the restriction or would wish to do so. However, we would be interested to know what the strict legal position is and whether it is considered that on the enfranchisement of the land the fee simple would have vested subject to this stipulation.

ASHOAK.

Answer.

We should have thought that the restriction still applied upon enfranchisement of the copyhold, as a matter of principle, and that the successor in title of the lord of the manor (and conceivably the freeholders of other ex-copyholds) might in theory be entitled to enforce it. It may be, no doubt, that the practical risk is negligible, but you might like to consider calling attention to part IV of the Lands Tribunal Rules, 1949, S.I. 2263 (L.29), especially to r. 18, under which the title could be cleared at small expense.

6.—Licensing—*Grant of occasional licence—Powers of Customs and Excise.*

At a recent court my magistrates, in their wisdom, supported an application for an occasional licence on the occasion of "a darts league final" until 11 *p.m.* and the necessary forms were sent to our local Customs and Excise. I agree that the application as so worded cannot by any stretch of the imagination be construed as a "public dinner or ball." But, without consulting the magistrate, the Customs and Excise made out the application to 10 *p.m.* In actual fact food was supplied at this function and I am sure the application could have been more happily worded but there was considerable feeling at the licence being stopped at 10 *p.m.* and I among others was inundated with requests for the extra hour, including I may add, whether I could grant the extra hour myself!

I have read with interest your P.P. 3 at 119 J.P.N. 242. If I have read your opinion correctly it would appear in this case that

the Customs and Excise are still labouring under the illusion that they have the same authority as existed under s. 13 of the Revenue Act, 1862. In my opinion, however, by s. 154 of the Customs and Excise Act, 1952, no discretion remains with the Commissioners of Customs and Excise or, put another way, they issue an occasional licence on the instructions of the magistrates. By this standard, I feel very arbitrary action was taken by the local Customs and Excise in this case. Do you agree?

NINCK.

Answer.

Although s. 151 (1) of the Customs and Excise Act, 1952, obliges the Commissioners of Customs and Excise to grant an occasional licence where the consent of a magistrates' court has been obtained, we think that the court was wrong in giving consent in respect of a " darts league final," even if, " in actual fact food was supplied at this function." Proviso (*a*) to the subsection makes it clear that, whatever consent the magistrates' court purports to give, the excise licence would not authorize the sale of intoxicating liquor after 10 *p.m.*, except on the occasion of a public dinner or ball.

Our answer to P.P. 3 at p. 242, *ante*, was directed to the discretion of the Commissioners of Customs and Excise to refuse the grant of an occasional licence because a dinner or ball is not described in the form of consent as " public." In our opinion, they have no such discretion: it is for the court to decide if the function is " public " and to give or to withhold consent to an occasional licence overrunning 10 *p.m.* accordingly.

But where a magistrates' court has obviously failed to advise itself correctly on the law, and has consented to the grant of an occasional licence until 11 *p.m.* for a " darts league final," which, on the face of it, is neither dinner nor ball so that questions of whether it is " public " or not do not arise, we think that the Commissioners of Customs and Excise were not wrong in issuing a document which did not have the appearance of authorizing something that the law prohibited.

7.—Local Government—*Council contracts—Declaration of interest.*

A is in partnership with B. From time to time the partnership has been employed in doing jobbing work for a district council in repairs to council houses, etc., on orders received from an official responsible for such repairs. A has now been elected a member of the district council. I have referred to s. 76 of the Local Government Act, 1933. Is it right in principle that this partnership should continue to undertake further jobbing work, or is the position covered by s. 76?

A.R.D.C.

Answer.

Section 76 was so framed as to allow a person having council contracts to be a member, unlike the older law which disqualified him. If the firm wants to undertake work for the council, A must abstain from taking part in business relating to that work, and must declare his position either under s. 76 (1), as soon as any question comes up which concerns his firm, or generally under s. 76 (4) in anticipation.

8.—Lotteries—*Distribution of prizes by club—No payment required.*

A prominent and prosperous working men's club in this town run what they call No. 1 and No. 2 snowballs. Number 1 is drawn each Saturday night at a specified time and No. 2 at Sunday lunch time. The method of operation of each is that the club provide a 10*s.* cash prize and at the specified time a member draws from a bag, containing slips of paper bearing the names of each member, one of the slips. If the member is present in the club he receives the 10*s.* If that member is not in the club that 10*s.* is added to a further 10*s.* provided by the club and the same procedure adopted the following week, except the winning member, if present, receives £1. This may continue for some weeks without being won and if the amount has reached £3 and not been won by the member being present that day, further draws are then made until three members' names are drawn who are present and each receives £1. The club frankly admit the sole purpose of running these " snowballs " is to promote sales and keep their members in the club instead of visiting other licensed premises.

I am doubtful whether this is an illegal lottery. Section 21 of the Betting and Lotteries Act, 1934, declares all lotteries to be illegal, subject to exceptions. One of these is in connexion with private lotteries (s. 24 (1)) " which is promoted for, and in which the sale of tickets or chances by the promoters is confined to either: (*a*) members of one society (which includes club), etc."

Subsection (2) states, " A private lottery shall be deemed not to be an unlawful lottery, but the following conditions shall be observed in connexion with the promotion and conduct of the lottery . . ." Then follows a number of conditions.

I am of the opinion that this " snowball " is a lottery, and if so, any lottery organized by the club must, to make it legal, comply with the requirements of s. 24. While it may be said the lottery is promoted for the members of the club, this can only be, as they admit, to attract members to promote sales, but there is no " sale of ticket or chances " as required by subs. (1), and a number of the conditions required by subs. (2) are also not being complied with.

I shall be very grateful for your valued opinion.

I would add that in this area there is some feeling by licensees because certain lotteries are permissible in clubs, but not on their premises.

S. MARCO.

Answer.

If this scheme involves, as appears, no payment of any kind for chances of a prize, but is entirely gratuitous, we do not think it is a lottery, *see* 15 *Halsbury* (2nd edn.), p. 526, citing *Willis* v. *Young and Stembridge* [1907] 1 K.B. 448. As the prizes are few and small, it can hardly be contended that members of the club are induced to become members by the prospect of gaining a prize, and it would be straining the facts to say that they paid indirectly, in their annual subscriptions, for their chances. There appears to be no real gambling element present.

9.—Magistrates—*Practice and procedure—Committal for trial to wrong quarter sessions—Remedying the mistake.*

With reference to P.P. 5 in the issue dated March 26, 1955, I have to inform you that a man was committed for trial from the local magistrates' court on charges of indecent assault, to a neighbouring county quarter sessions. As the local quarter sessions commenced the day after the proceedings before the examining justices, this was clearly wrong. I should add that the prosecution was undertaken by a member of the staff of the Director of Public Prosecutions, and he later took steps to have the case taken out of the list of the neighbouring county quarter sessions. I understand that it is now proposed to bring the man before the same examining justices and merely ask for a committal to the local quarter sessions without hearing any further evidence. In my opinion, the only proper way is (*a*) to have a complete re-hearing, or (*b*) to obtain a bill of indictment from a Judge in chambers, and I should be grateful for your views.

SAINSBO.

Answer.

We have dealt with this problem at 118 J.P.N. 720, P.P. 7, as well as at 119 J.P.N. 210, P.P. 5. There is also a letter from a learned correspondent at 118 J.P.N. 805. We agree that there is no provision enabling justices to " re-commit " as is proposed and we have dealt in our previous answers with the difficulty about witnesses and so on.

We agree also that application can be made to a judge to allow an indictment to be preferred under s. 2 (2), Administration of Justice (Miscellaneous Provisions) Act, 1933, and we think this is a better cause to adopt than to have a complete re-hearing before justices.

10.—Rating and Valuation—*Distress—Uncertificated bailiff.*

(*a*) I understand that a bailiff appointed by the council does not need to be certificated in order to levy distress for rent and rates. Is this so?

(*b*) If the answer to (*a*) is in the affirmative, what advantage is there in being certificated?

P.R.E.C.

Answer.

(*a*) A certificated bailiff only may distrain for rent; *see* Law of Distress Amendment Act, 1888, s. 7, but a distress warrant for rates is directed to the rating authority and the police. The rating authority act through their officer authorized by them.

(*b*) One advantage lies in his being able to distrain for rent also; we have advised, moreover, that (where an outside bailiff or part-time bailiff is employed) there is advantage in employing a man who knows the practice and procedure and (by reason of his holding a certificate from the court) has something at stake. *See* also P.P. 7 at p. 420, *ante*.

11.—Road Traffic Acts—*Motor assisted cycle—Being ridden without the motor, which had slight clutch defect but was capable of being used—Need for a driving licence.*

It would be very much appreciated if I could have your valued opinion on the following matter:

Recently a woman was stopped in this district whilst riding a pedal cycle with a mini-motor attachment which, at the time, was not in use but, except for a slight defect to the clutch, was quite capable of being used. Opinions are divided as to whether or not the rider of the cycle should, under the circumstances described above, hold a driving licence.

JENNIC.

Answer.

There are two relevant cases:

1. *Lawrence* v. *Howlett* [1952] 2 All E.R. 74; 116 J.P. 391.
2. *Floyd* v. *Bush* [1953] 1 All E.R. 265; 117 J.P. 88.

We think it would be held that on the facts given in the question this cycle was at the relevant time a motor vehicle and that a driving licence was necessary.

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Town Hall,
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